THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

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The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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GENERAL ANNOUNCEMENTS

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Pension Division – Staff Changes

John Khing Shan replaces Chantal Laurin as Pension Officer (bilingual) while she is on maternity leave. Mark Lucyk, Bill Qualtrough, Stanley Chan and Robin Gray join the Pension Plans Branch as Pension Officers.

Hirsh Tadman joins the Pension Policy Unit as a Senior Policy Analyst.

HEARINGS/COURT MATTERS

The information set out below is current to March 22, 2002.

Enforcement Matters

Charges laid under the *Pension Benefits Act.*

i. Canadian Corporation Creation Center (CCCC)

Charges under the *Pension Benefits Act* (the "*Act*") were laid against the CCCC Pension Plan administrator, the individual trustees, CCCC and related companies on September 12, 2001. The charges relate to a scheme whereby locked-in accounts were assigned to the defendant companies in return for a promise to extend a loan to the locked-in account holder. A first appearance occurred on October 9, 2001. A second appearance occurred on December 6, 2001, at which time one of the individual trustees plead guilty to a charge of failing to administer the CCCC Pension Plan in accordance with the *Act*. A fine of $5000 inclusive of victim surcharge was levied. The charges against the other defendants were put over to March 21, 2002. On March 21, 2002, the matter was put over to April 23, 2002.

ii. Visentin Steel Fabricators Ltd.

Charges were laid for failing to file annual information returns. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the matter was put over for a third appearance on January 15, 2002. On January 15, 2002, the matter was put over for a fourth appearance on February 12, 2002. On February 12, 2002, a trial date was set for April 12, 2002.

iii. Kendan Manufacturing Limited

Charges were laid for failing to file an annual information return and to pay the PBGF assessment for two consecutive years. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the matter was put over for a third appearance on January 15, 2002. On that date, Kendan plead guilty to the charges. A total fine of $2000 in respect of all charges was levied.

iv. Bimeda-MTC Animal Health Inc./ Bimeda-MTC Sante Animale Inc.

Charges were laid in respect of two pension plans administered by Bimeda. In one pension plan, Bimeda was charged for failing to file a financial statement. In respect of the other plan, Bimeda was charged for failing to file financial statements for two consecutive years. The first appearance for the charges was on March 5, 2002, at which time the matter was put over to April 16, 2002.

v. Dubreuil Forest Products Ltd.

Charges were laid for failing to file financial statements for two consecutive years. The first appearance for the charges was on March 5, 2002, at which time the matter was put over to May 21, 2002.

vi. Darcor Ltd.

Charges were laid for failing to file an annual information return and failing to pay the filing fee associated with another annual information return. On March 5, 2002, Darcor plead guilty to all charges. A total fine of $2000 was levied in respect of all charges.

vii. Pacific Paving Ltd.

A charge was laid for failing to file a financial statement. The first appearance for the charge was on March 5, 2002, at which time the matter was put over to April 16, 2002.

viii. Pass & Seymour Canada, Inc.

Charges were laid for failing to file a financial statement and an annual information return. The first appearance for the charges was on March 5, 2002, at which time the matter was put over to April 16, 2002.

Court Matters

i. Régime de retraite des employés et membres de Canadian Corporation Creation Center, Registration Number 1062363 (the "CCCC Pension Plan")

FSCO has intervened in a proceeding before the Quebec Superior Court for a judgement regarding the ownership of funds contained in certain bank accounts held at a Montreal branch of the National Bank of Greece (Canada). The basis for FSCO's intervention is that the accounts contain funds that are attributable to the CCCC Pension Plan. Effective August 3, 2001, the Deputy Superintendent, Pensions, is acting as administrator of the CCCC Pension Plan. On October 19, 2001, the Court granted FSCO's request for intervener status. In addition, the Court granted FSCO's separate motion for seizure before judgement freezing the funds in the accounts. On January 10, 2002, the Court granted judgement on the consent of the parties requiring that assets in the accounts be paid over to FSCO.

ii. Retirement Income Plan for Salaried Employees of Weavexx Corp., Registration Number 264663 (the "Weavexx Plan")

On May 30, 2000, the Superior Court of Justice, Ontario Divisional Court, granted an application for judicial review brought by a group of former members of the Weavexx Plan to set aside the Superintendent of Pensions' August 1997 consent to a transfer of assets from the Weavexx Plan to the BTR Pension Plan for Canadian Employees. The decision of the Court was based on the conclusion that the Superintendent had exceeded his jurisdiction in failing to consider the issues of surplus, trust and a requested partial windup of the Weavexx Plan.

An addendum, issued by the Court on November 16, 2000, stated that the return of assets to the Weavexx Plan was not to be the subject of a Financial Services Tribunal ("Tribunal") hearing and that any decision made by the Superintendent of Financial Services in respect of the requested partial windup was to be referred to the Tribunal for a hearing. The Court also awarded the applicants $54,294.06 in costs.

The Ontario Court of Appeal granted both the Superintendent and BTR, Inc. leave to appeal these decisions on February 26, 2001. Both appeals were heard on November 19, 2001.

On February 14, 2002, the Court of Appeal released its decision. The appeal was dismissed except for two aspects: the Court confirmed that the employer does not owe a duty of fairness to the members as the employer does not make the decision consenting to the transfer of assets; and the Court confirmed that an automatic hearing before the Tribunal would ensue as the result of any decision made by the Superintendent concerning the partial windup request.

iii. Colgate-Palmolive Canada, Inc. Pension Plan for Salaried and Non-Union Hourly Employees

On November 29, 2000, the Superior Court of Justice, Ontario Divisional Court, dismissed an application for judicial review brought by a group of former members of the Colgate-Palmolive Canada, Inc. Pension Plan for Salaried and Non-Union Hourly Employees who wanted to set aside the Superintendent of Pensions' December 1995 consent to a transfer

of assets from the Bristol-Myers Canada Inc. Retirement Income Plan to the Colgate Plan. The applicants also wanted the Superintendent's August 1994 approval of a Partial Windup Report filed by the Colgate Plan set aside.

The Court found that the applicants, as members of the importing pension plan, had no right to object to the transfer; any right to object would have been exercised when the amendment to the Colgate Plan respecting the transfer was filed. The Court also found that there was no evidence to support a partial windup involving additional former members of the Colgate Plan.

On February 26, 2001, the Ontario Court of Appeal granted leave to appeal to the applicants. The Court ordered that this appeal be heard together with the Weavexx appeal. Both appeals were heard on November 19, 2001.

On February 14, 2002, the Court of Appeal released its decision. The appeal was dismissed except that the Court found that the Divisional Court had erred in striking certain portions of the Applicants' affidavit. No costs were awarded.

iv. Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File Number P0013-1998

On November 30, 1998, the Superintendent issued a Notice of Proposal to Refuse to Approve a Partial Windup Report filed by Monsanto Canada Inc. ("Monsanto") in respect of a 1997 plant closure. The grounds for the refusal were: (a) the Windup Report did not deal with the surplus distribution on partial windup; (b) the payment of benefit enhancements on windup to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the Windup Report provided that the funds relating to benefits of those in the partial windup group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto requested a hearing before the Financial Services Tribunal (the "Tribunal") in respect of the Notice of Proposal to Refuse to Approve.

The hearing was held on January 10-12 and February 7-11, 2000. The Tribunal issued majority and minority Reasons dated April 14, 2000, which were published in Volume 9, Issue 2 of the Pension Bulletin. In the result, the Tribunal directed the Superintendent to approve the Partial Windup Report.

The decision of the Tribunal was appealed to the Superior Court of Justice, Ontario Divisional Court. On March 19, 2001, the Court allowed the appeal on the basis of its conclusion that the first ground set out in the Notice of Proposal ((a) above) was a proper basis for the Superintendent to refuse to approve the Partial Windup Report and that the Superintendent was entitled to rely on that ground. In this respect, it adopted the minority Reasons of the Tribunal and directed the Superintendent to carry out the Notice of Proposal to Refuse to Approve.

The Court found that the Financial Services Tribunal majority's interpretation of subsection 70(6) of the *Pension Benefits Act* was unreasonable. The Court also found that the Financial Services Tribunal majority's finding on legitimate expectation misinterpreted the legislation and was an error in law.

Monsanto, the Association of Canadian Pension Management, and the National Trust Company each sought leave to appeal this decision. On June 28, 2001, the Ontario Court of Appeal granted leave. The appeal has been scheduled for April 29 and 30, 2002.

v. Ontario Teachers' Pension Plan Board

On May 31, 2000, the Financial Services Tribunal (the "Tribunal") rendered a decision that a former spouse of a plan member who had signed a separation agreement awarding her an interest in the plan member's pension (including death benefits) was not entitled to any interest in pre-retirement death benefits pursuant to section 48 of the *Pension Benefits Act*. The Tribunal relied on three major grounds in directing the Superintendent not to issue the Notice of Proposal ordering the Board to pay the former spouse these benefits:

a) a domestic contract is only enforceable under subsection 48(13) of the *Pension Benefits Act* if it has been signed by the plan member's current spouse at death;

b) a plan member has no proprietary interest in death benefits and therefore cannot assign them in a separation agreement;

c) clearer statutory language is needed to oust the plan member's current spouse's entitlement under subsection 48(1).

The former spouse has appealed this decision to the Ontario Divisional Court. The appeal is scheduled to be heard on May 24, 2002.

vi. Dustbane Enterprises Limited

On June 7, 2002, the Ontario Divisional Court will hear an appeal arising from a Financial Services Tribunal ("Tribunal") decision which directed the Superintendent to carry out a Notice of Proposal ordering Dustbane Enterprises Limited to pay a deficit owing to the Plan fund for the Retirement Plan for Employees of Dustbane Enterprises Limited on the partial windup of the plan. The majority Tribunal decision held that the Plan was not a multi-employer pension plan and that any delay in processing the partial windup could not excuse non-compliance with the *Pension Benefits Act*. The dissenting decision held that the Plan was a multi-employer pension plan and that therefore, the distributors who were the subject of the partial windup were responsible for funding the deficit; however, some consideration should be given to Dustbane assisting with the payment as the distributors were not kept informed generally about the Plan and because a large part of the deficit was attributable to actuarial fees. The dissenting decision agreed with the majority decision on the delay issue.

LEGISLATIVE CHANGES/REGULATORY POLICIES

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Deadlines
INDEX NO.:	D050-801
TITLE:	Extension of Deadline for Filings - PBA s. 105 - Regulation 909 ss. 3(2), 13(1), 14(10), 18(1), 18(7), 76(4)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (March 2002)
EFFECTIVE DATE:	March 1, 2002

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Applications for Extension of Filing Deadline

Section 105 of the PBA grants the Superintendent of Financial Services ("Superintendent") the authority to extend any procedural time limit related to the powers conferred on or duties assigned to the Superintendent under the PBA or the Regulation. However, the Superintendent has the authority to extend such a time limit only if satisfied that there are reasonable grounds for applying for the extension. In determining whether reasonable grounds exist for applying for the extension, the Superintendent will consider whether the extension will adversely affect member benefits.

For the extension of time limits for filings required under subsection 3(2), 13(1), 14(10), 18(1), 18(7) or 76(4) of the Regulation (funding valuation report, annual information return, Pension Benefit Guarantee Fund assessment certificate, or pension fund/plan financial statements), signed applications from the Plan Administrator or authorized agent should be directed to the Pension Officer responsible for the pension plan and should clearly provide the following:

1. Plan name
2. Plan registration number
3. Type of filing
4. Period covered by the filing
5. Requested filing date
6. Reason for the request
7. Confirmation that the extension will not adversely affect member benefits. For the extension of time limits for funding valuation reports, evidence to support the confirmation must be provided. For the extension of time limits for filings other than for funding valuation reports, the Superintendent will assess the confirmation and may, if not satisfied with the confirmation in the particular case, require evidence to support the confirmation provided.

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION :	Locked-In Accounts
INDEX NO.:	L200-100
TITLE:	General Requirements
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (March 2002)
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REPLACES:	L050-200, L050-201, L050-510, L050-605, L050-875, L050-900, L100-075, L100-125, L100-130, L100-200, L100-300, L100-400, L100-600, L100-700

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Introduction: Locked-In Accounts under the *Pension Benefits Act*

The introduction of pension reform in the mid-1980's, specifically the areas of portability options and commuted values, paved the way for the transfer of pension money to locked-in accounts in Ontario. Clause 42(1)(b) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("PBA"), provides that a former member of a pension plan who, on or after January 1, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension, is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension into a *prescribed retirement savings arrangement* (which is referred to in this policy as a "locked-in account"). Previously, when members of a pension plan terminated employment or plan membership, their only recourse was to leave the accrued benefit in their former employer's pension fund and arrange to be paid a pension at retirement age.

By allowing for the direct transfer of the commuted value of former members' pension benefits into locked-in accounts, the PBA gives individuals greater control over their retirement monies. To ensure that locked-in accounts reflect certain principles of pension plans, the legislation contains restrictions that are intended to preserve the money for retirement and provide a lifetime stream of retirement income for former members and their spouse or same-sex partner, if any. These restrictions are generally referred to as the locking-in rules.

This policy will provide an overview of locking-in and review certain rules common to all locked-in accounts. The rules and requirements that apply to each specific type of locked-in account will be the subject of other policies.

Administration of Locked-In Accounts: Responsibilities of Plan Administrators and Financial Institutions

Locked-in accounts include Locked-In Retirement Accounts ("LIRAs"), Life Income Funds ("LIFs") and Locked-In Retirement Income Funds ("LRIFs"). To ensure that these savings accounts receive special tax-assisted treatment under the *Income Tax Act* (Canada) ("ITA"), LIRAs must comply with the ITA requirements for Registered Retirement Savings Plans ("RRSPs"), and LIFs and LRIFs must comply with the ITA requirements for Registered Retirement Income Funds ("RRIFs"). This policy will refer to LIRAs, LIFs and LRIFs collectively as "locked-in accounts".

In accordance with subsection 20(3) of the Regulation 909 made under the PBA ("the Regulation"), transfers from pension funds to locked-in accounts are permitted only if the financial institutions that issue the accounts agree to administer the transferred funds, including all earnings, as a pension or deferred pension in accordance with the PBA and Regulation. In other words, the financial institution must, among other things, ensure that the money remains locked-in.

The rules which prevent money in locked-in accounts from being unlocked are found in section 67 of the PBA: a pension, deferred pension, pension benefit, annuity *or prescribed retirement savings arrangement* that results from a purchase or transfer under section 42, 43 or 48 or subsection 73(2) to which a person is entitled is not capable of being commuted or surrendered, in whole or in part, during the person's life. Corresponding restrictions are found in section 21 of the Regulation for LIRAs, subsection 3(1) of Schedule 1 for LIFs, and subsection 3(1) of Schedule 2 for LRIFs.

When members wish to transfer their locked-in account from one financial institution ("the transferor") to another ("the transferee"), the transferor must receive confirmation that the money will remain locked-in before making the transfer. Locked-in accounts can only be transferred to other locked-in accounts, or in certain circumstances, to pension funds (that are also locked-in).

Pension legislation provides certain rights and entitlements to the spouses or same-sex partners of pension plan members if the member dies prior to retirement, and also after the member begins to receive a retirement income. Spouses and same-sex partners continue to have this protection when pension money is transferred to locked-in accounts. For each type of locked-in account, there are specific requirements governing survivor benefits, which are discussed in separate policies dealing specifically with LIRAs, LIFs and LRIFs. [Note: The use of the term "spouse" in this policy has the same meaning as "spouse" as defined in the PBA, which includes a common-law spouse. The term "same-sex partner" has the same meaning as "same-sex partner" as defined in the PBA.]

When financial institutions fail to administer locked-in accounts as required, they are in contravention of the PBA. In addition to any action that may be taken by FSCO, if financial institutions release locked-in funds in contravention of the PBA or do not comply with the survivor benefit requirements, spouses or same-sex partners who may be denied their rights and benefits provided under pension legislation may initiate legal proceedings against the financial institutions involved.

How to Administer Locked-In Accounts: Multi-jurisdictional Considerations

Subsection 20(3) of the Regulation prohibits the administrator or the agent of the administrator of a registered pension plan (the initial transferor) from making a transfer from a plan fund unless the financial institution to which the money is transferred (the transferee) agrees to administer the funds as a pension or deferred pension (e.g., locked-in). When locked-in money is subsequently transferred to another financial institution, the new institution must also administer the funds as a pension or deferred pension.

While pension legislation of each jurisdiction in Canada which regulates pension plans permits the transfer of money from a registered pension plan to a locked-in account, there are differences in each jurisdiction's rules. Financial institutions that administer locked-in accounts are responsible for administering them as a pension or deferred pension.

The key to understanding the rules that determine how any individual transfer amount must be administered is knowing which pension legislation originally applied to the member under the plan; the legislation of that jurisdiction will continue to apply after the transfer. Where the money is being transferred in accordance with the PBA and Regulation to a financial institution in another Canadian jurisdiction, all parties must ensure that the transfer satisfies Ontario's rules, i.e., that the funds in the locked-in account continue to be administered in accordance with Ontario pension law.

Pension Legislation in Canada

Registered pension plans must be registered under the statute of one of the following federal or provincial jurisdictions in Canada:

Alberta	*Employment Pension Plans Act*
British Columbia	*Pension Benefits Standards Act*
Manitoba	*Pension Benefits Act*
New Brunswick	*Pension Benefits Act*
Newfoundland	*Pension Benefits Act, 1997*
Nova Scotia	*Pension Benefits Act*
Ontario	*Pension Benefits Act*
Québec	*Supplemental Pension Plans Act*
Saskatchewan	*Pension Benefits Act, 1992*
Federal (Canada)	*Pension Benefits Standards Act, 1985 (Canada)*

The *Pension Benefits Standards Act*, 1985 (Canada) ("PBSA (Canada)") is the federal statute which regulates pensions for plan members who work in "included employment". Transfers of locked-in money made on behalf of persons who worked in included employment must be administered as required by the PBSA (Canada). Included employment is work in any undertaking or business that is within the legislative authority of the Parliament of Canada (e.g., broadcasting, transportation, banking, etc.). A complete definition of included employment is contained in the PBSA (Canada). Pension plan members who are employed in the Northwest Territories, Yukon Territory and Nunavut are also covered by the PBSA (Canada).

Provincial statutes regulate pensions for plan members who are employed in those provinces and who do not work in included employment. The administration of locked-in money transferred on behalf of a person who terminates employment in a specific province continues to be subject to that provincial statute. If a plan member does not actually report to work in any one province, that individual is considered to be employed in the province where the employer who pays the individual's remuneration has an office or an establishment.

Pension Plans with Members in More than One Province

If all the members of a pension plan are employed in one province, the plan must be registered under the statute of that province. That statute will regulate how the plan is funded and administered. The statute will also regulate how and when portability options become available to the members of the plan. All locked-in transfers from the pension plan must be administered as required by the statute of the jurisdiction of registration. Similarly, if all of the members of a pension plan are employed in included employment, the plan must be registered under the PBSA (Canada). All matters related to that plan are subject to the requirements of the PBSA (Canada).

The administration of a pension plan and any locked-in transfers made from that plan becomes more complex where all plan members are not employed in one province or are not all employed in included employment. Where plan members work in two or more jurisdictions, the pension plan is registered in the jurisdiction where the majority of the plan members are employed. The province of registration does not dictate the portability options; this is determined by the province of employment as outlined above.

For example, where a pension plan registered under the Ontario PBA also has members who work in included employment and members who are employed in Alberta, the Ontario statute regulates all matters, including portability, for only the Ontario members. The federal PBSA applies to members in included employment and the Alberta *Employment Pension Plans Act* regulates all matters for the Alberta members. Locked-in money transferred with respect to the Ontario members remains subject to the Ontario PBA. This means that any transfer to a locked-in account belonging to an Ontario member is permitted only where the locked-in account issued by a financial institution meets Ontario's requirements.

Contracts of Locked-In Accounts Approved by Other Jurisdictions May Not Meet Ontario's Requirements

Some jurisdictions require specimen documents for locked-in accounts to be submitted to the respective regulatory authority for approval, and maintain approved lists of financial institutions that provide locked-in accounts which meet the requirements of their respective legislation. Such a list of approved vendors or contracts, however, only indicates compliance with the legislation of the jurisdiction that maintains the list.

Ontario does not maintain a list of approved financial institutions that provide locked-in accounts and does not require that specimen documents be submitted for approval. A plan administrator who is making a transfer with respect to an Ontario member is subject to subsection 20(3) of the Regulations, and thus cannot complete the transfer until the transferee has agreed to continue administration in accordance with the requirements of the PBA and Regulation. The Regulation also contains specific requirements for LIRAs, LIFs and LRIFs that the financial institution must abide by.

Recent Ontario Changes Affecting Locked-In Accounts: Shortened Life Expectancy, Small Amounts, Amounts that Exceed ITA Limits, and Financial Hardship

Effective March 3, 2000, the *Pension Benefits Statute Law Amendment Act, 1999* ("PBSLAA") amended the PBA in the following ways with respect to locked-in accounts:

1. Shortened Life Expectancy

March 3, 2000, subsection 49(1) of the PBA and subsection 21(2)(d) of the Regulation provided that the owner of a LIRA could apply to the financial institution that administers the LIRA to have the money paid out if the pension plan from which the money originated contained a provision allowing for the variation in payment of the pension due to the shortened life expectancy of that person. This option was not then available to owners of LIFs or LRIFs, but subsection 49(1) now applies to LIFs and LRIFs as well as LIRAs by virtue of sections 3 of Schedules 1 and 2 under the Regulation.

As of March 3, 2000, there are two ways in which an individual with shortened life expectancy may receive a variation of payment: pursuant to subsection 49(1) of the PBA (under the terms of the originating pension plan if the individual owns a LIRA, LIF or LRIF and the plan contains such provision) or pursuant to subsection 49(2) of the PBA (for owners of LIRAs, LIFs and LRIFs, regardless of whether the originating plan contains a shortened life expectancy provision).

If the originating plan contains a provision for shortened life expectancy, a LIRA, LIF or LRIF owner can apply for variation of payment under the terms of the plan to the financial institution holding the account. Whether the individual has a disability that is likely to "shorten considerably his or her life expectancy" is essentially a medical question, and verification by a qualified medical practitioner should be submitted to the financial institution. On the basis of that opinion and confirmation that the former pension plan does contain a shortened life expectancy provision, the financial institution should determine whether a variation in payment is appropriate in the circumstances (i.e., it meets the criteria for shortened life expectancy set out in the original plan). There is no prescribed form that must be used when an individual applies pursuant to subsection 49(1).

Regardless of whether the originating plan contains a shortened life expectancy provision, anyone who owns a LIRA, LIF or LRIF and suffers from shortened life expectancy can apply to the financial institution for variation of payment. All applications under subsection 49(2) must be made to the financial institution on a Superintendent-approved form (Form 5). Generally, the owner must provide the consent of his or her spouse or same-sex partner, if any, and a statement from a physician licensed to practice medicine in a jurisdiction in Canada that, in the opinion of the physician, the owner has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The owner may apply to withdraw some or all of the money in the account.

If the originating plan does contain a shortened life expectancy provision, the individual may apply under those terms or under the rules set out under subsection 49(2). (Detailed criteria for s. 49(2) shortened life expectancy are found in s. 51.1 of the Regulation.) In some cases, the plan may provide less strict terms (such as a life expectancy of five years) and it may be more advisable to apply under those terms.

2. Small Amounts

If an individual is at least 55 years old and the total value of all assets held in every Ontario LIRA, LIF and LRIF the individual owns is less than 40% of the Year's Maximum Pensionable Earnings (the "YMPE", which is a dollar figure set each year in relation to the Canada Pension

Plan); for applications signed in 2002, the amount is 40% of $39,100 (the YMPE for 2002 = $15,640), he or she may apply to the financial institution that administers the LIRA, LIF or LRIF to withdraw all of the money in the account – a partial withdrawal is not permitted. The Application must be made to the financial institution on a Superintendent-approved form (Form 5). The owner must provide the consent of his or her spouse or same-sex partner unless they are living separate and apart at the time the application is signed.

The value of the assets held in each Ontario locked-in account must be based on the most recent statement provided by the financial institution, and the financial statement must not be dated more than 1 year before the date the application is signed.

3. Amounts that Exceed ITA Limits

The ITA imposes a limit on the amount that an individual may transfer from a registered pension plan to a locked-in account when a former member terminates employment or terminates membership in the plan and is entitled to a deferred pension. Amounts transferred pursuant to subsection 42(1) of the PBA that do not exceed the ITA limit may only be transferred to a LIRA, LIF or LRIF. Effective March 3, 2000, if the amount of the commuted value of an individual's deferred pension that is to be transferred to a locked-in account is greater than the amount allowed under the ITA for such a transfer, the administrator shall pay the excess amount to the individual in a lump sum. However, if an amount that exceeds the ITA limit has already been transferred to a locked-in account, section 22.2 of the Regulation allows the owner of the account to apply to the financial institution to withdraw the excess amount and any subsequent investment earnings, including any unrealized capital gains or losses that are attributable to the excess amount, or to transfer that amount to a non-locked-in RRSP or RRIF. It is up to the financial institution that administers the account to calculate this aggregate amount. The application must be made on a Superintendent-approved form (Form 5), and must include a written statement from either the plan administrator or the Canada Customs and Revenue Agency (CCRA, formerly Revenue Canada) that sets out the excess amount that was transferred into the locked-in account. It is not necessary for a spouse or same-sex partner to consent to this withdrawal.

4. Financial Hardship

Effective May 1, 2000, individuals who qualify under certain prescribed circumstances of financial hardship may apply to the Superintendent of Financial Services for access to the money in their locked-in accounts. The rules and requirements for making such applications will be set out in a future policy.

Frequently Asked Questions About Locked-In Accounts

Do the locking-in rules expire when an individual reaches a certain age, such as 65?

Money in locked-in accounts is always subject to the rules of the PBA and Regulation, including the non-commutation (locking-in) rules, regardless of the individual's age.

Do the locking-in rules cease to apply when an individual leaves Canada?

Although some jurisdictions allow individuals who have left Canada to receive the money in their locked-in accounts in a lump sum, Ontario has no such provision. For individuals with Ontario locked-in accounts who leave Canada, their locked-in accounts continue to

be governed by Ontario law, and they must receive payment in the same manner as if they were still in Canada (such as through a life annuity, LIF or LRIF).

Do the locking-in rules cease to apply if locked-in money is transferred to a financial institution outside Ontario?

Money in a locked-in account cannot be transferred to another financial institution, whether inside or outside Ontario, unless the money continues to be administered in accordance with the PBA and Regulation, including the locking-in requirements. Since Ontario law cannot be enforced outside Canada, locked-in money cannot be transferred to financial institutions outside Canada.

Is interest credited on the money in locked-in accounts also locked in?

The rule which prevents the withdrawal of money from locked-in arrangements applies to all money in the account (s. 21(2)(a) of the Regulation for LIRAs, s. 3(1) of the LIF Schedule 1 and s. 3(1) of the LRIF Schedule 2).

Where a contract provides that money is "locked-in" at a fixed interest rate for a certain period of time, do the pension locking-in provisions expire when the time period ends?

No; this confuses the pension locking-in rules with the period of time that the money is subject to a guaranteed rate of return and cannot be accessed without penalty. The pension locking-in rules apply as long as the contract is in effect.

Can locked-in money be borrowed against or be used as collateral to secure a loan?

This is specifically prohibited by sections 65 and 66 of the PBA.

Can locked-in accounts be combined with non-locked-in accounts?

The purpose of locked-in accounts is to hold monies that originated from registered pension plans (RPPs). Accordingly, the only monies that may be deposited in locked-in accounts are those which originated from a pension plan or another locked-in account. Individuals should not combine locked-in accounts with non-locked-in accounts.

Can locked-in accounts hold an owner's personal mortgage?

Yes, provided that money in locked-in accounts are held as self-directed LIRAs, LIFs or LRIFs. This type of arrangement allows investment in a number of options not usually available under arrangements that are not self-directed. These options include Canada Savings Bonds, bonds, mutual funds, Treasury Bills, individual stocks, and home mortgages.

Ontario's pension law requires strict adherence to the PBA and Regulation in the administration of locked-in funds. Self-directed locked-in accounts that are designed to hold a personal mortgage must be administered at arms-length from the homeowner. The mortgage must be insured and set at rates generally available in the open market. If mortgage payments are in default, the administrator of the mortgage may foreclose. In such circumstances, the property can be sold and the outstanding loan amount paid back into the locked-in account.

Financial institutions administering locked-in self-directed accounts must observe both federal and provincial legislation. The CCRA regulates the investment options available, such as the percentage of assets which may be invested in foreign property. Ontario requires locked-in money to be administered according to the PBA

and Regulation, and financial institutions which fail to administer locked-in money accordingly may be subject to prosecution.

Why is some pension money locked-in at termination of employment and some not? How do the pre-1987 vesting and locking-in provisions apply to former members who terminate employment after January 1, 1987?

As of January 1, 1988, both employer and employee contributions made after January 1, 1987 are vested and locked-in after two years of plan membership, and may only be used to provide a retirement income. However, benefits earned prior to 1987 (if not vested and locked-in earlier by plan provisions) only become locked-in when the member reaches age 45 and has 10 years of service. If not locked-in under these rules, employee contributions may be refunded on termination of employment.

The pre-1987 requirements for vesting and locking-in only apply to benefits that accrued prior to January 1, 1987. If the former member was a plan member for 10 years or has 10 years service and is at least 45 as of the date of termination of employment or membership, the pre-1987 benefits are vested and locked-in. However, if the 10-and-45 requirement is not met, the pre-1987 benefits are not vested and any contributions the individual made may be refunded to him or her, plus interest. As a result, it is possible to be vested and locked-in for some benefits and not for others.

How does the 2% of YMPE commutation apply to locked-in money?

Section 50 of the PBA provides that the terms of a pension plan may permit the payment of the commuted value of an annual pension payable at normal retirement date as a lump sum amount if that pension is less than 2% of the YMPE in the year of the plan member's termination. This option must be exercised under the pension plan; it does not apply to money in locked-in accounts or to life annuities purchased with money transferred from a locked-in account. Section 50 is limited to the terms of a pension plan and there is no authority under the PBA or Regulation to permit a financial institution to apply such a provision to a locked-in account or annuity.

What is the liability of the plan administrator once money is transferred to a locked-in account?

Subsection 42(11) of the PBA discharges a plan administrator from any further responsibility for administering the pension or deferred pension entitlement of an individual when locked-in money is transferred to a financial institution. Financial institutions that receive locked-in money assume responsibility for administering the locked-in accounts in accordance with the relevant provisions of the PBA and Regulation.

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION :	Locked-In Accounts
INDEX NO.:	L200-200
TITLE:	Locked-In Retirement Accounts (LIRAs)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (March 2002)
EFFECTIVE DATE:	March 1, 2002
REPLACES:	L050-100, L050-200, L050-201, L100-150, L100-200, L100-500, L100-600

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Introduction: The Locked-In Retirement Account

Clause 42(1)(b) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("PBA") provides that a former member of a pension plan who, on or after January 1, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension, is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension into a prescribed retirement savings arrangement (referred to in this policy as a "locked-in account").

This policy will provide an overview of the main features and requirements of one such locked-in account, the Locked-in Retirement Account ("LIRA"). For greater details regarding the rules which apply to all types of locked-in accounts, please refer to policy L200-100.

Effective June 24, 1994, Regulation 909, R.R.O. 1990 under the PBA ("Regulation") was amended to introduce the LIRA. The LIRA must satisfy the requirements of two statutes. To ensure that money in the LIRA is allowed to accrue on a tax-deferred basis, each LIRA must be established as a Registered Retirement Savings Plan ("RRSP") in accordance with the *Income Tax Act* (Canada) ("ITA"). In addition, to ensure that the money in the LIRA is preserved for retirement and provides a lifetime stream of income, each LIRA must comply with the "locking-in" requirements set out in the PBA and Regulation. Prior to the introduction of the LIRA, the pension industry referred to this type of locked-in account as a locked-in Registered Retirement Savings Plan (a "locked-in RRSP").

The Contractual Requirements of the Ontario LIRA

Some Canadian jurisdictions require that specimen LIRA contracts be approved by their pension regulatory authority and maintain a list of financial institutions whose LIRA contracts have been approved. Ontario does not require that specimen contracts be submitted for approval and does not maintain such a list. Any financial institution may issue an Ontario LIRA as long as it complies with the requirements of the PBA and the ITA.

The key feature of LIRAs that distinguishes them from regular (non-locked-in) RRSPs is that no money may be withdrawn from LIRAs except in circumstances prescribed by Regulation: subsection 21(2)(a) of the Regulation which states that a contract to establish a LIRA shall provide that money in the account will not be withdrawn in whole or in part, except in the situations described below.

Transfers from a LIRA

Money in a LIRA, including any accrued interest and any other investment earnings, may only be transferred:

- to the pension fund of a subsequent employer's registered pension plan, if that plan is willing to accept the transfer and administer it in accordance with the PBA and Regulation;
- to another LIRA;
- to a Canadian insurance company for the purchase of an immediate or deferred life annuity;
- to a Life Income Fund ("LIF") or Locked-In Retirement Income Fund ("LRIF"); or
- for payment under the terms of the PBA and Regulation in situations of shortened life expectancy, specified LIRA amounts at age 55 or over, excess amounts held in the LIRA under the ITA, or in prescribed circumstances of financial hardship.

The Regulation requires that the LIRA contract provide that:

- the money in the LIRA will not be assigned, charged, anticipated or given as security (except pursuant to a court order or domestic agreement under the *Family Law Act*), and any transaction which does so is void;
- the money in the LIRA cannot be commuted, withdrawn or surrendered, in whole or in part (except as permitted under the PBA and Regulation), and any transaction that does so is void; and
- if money in the account is subsequently transferred, the transferee must agree to administer it as a pension or deferred pension (i.e., the money must remain locked-in) in accordance with the PBA and Regulation.

Payment of a Death Benefit

The LIRA contract must provide that on the death of the owner, the financial institution which holds the LIRA will administer the money in accordance with section 48 of the PBA. This means that the owner's spouse or same-sex partner is entitled to receive a pension or a lump sum payment equal to the value of the LIRA on the date of death. However, this legislated entitlement does not apply if the spouse or same-sex partner had previously waived his or her entitlement to the death benefit, or if the owner and the spouse or same-sex partner were living separate and apart at the time of the owner's death. The intent is not to deny a spouse or same-sex partner who is living separate and apart any entitlement to a survivor benefit; a waiver simply revokes the legislated entitlement to the survivor benefit but does not prevent the owner from designating

the spouse or same-sex partner as a beneficiary. [Note: The use of the term "spouse" in this policy has the same meaning as "spouse" as defined in the PBA, which includes a common-law spouse. The term "same-sex partner" has the same meaning as "same-sex partner" as defined in the PBA.]

Where there is no spouse or same-sex partner, where there has been a waiver of entitlement, or where the spouse or same-sex partner are living separate and apart at the time of the owner's death, the death benefit would be paid to the owner's designated beneficiary or, if there is no beneficiary, to the owner's estate. The death benefit must be paid as an unlocked lump sum.

Assignment of Money in a LIRA on the Breakdown of a Marriage or Permanent Relationship

The LIRA contract must provide that money in a LIRA cannot be assigned, charged, anticipated or given as security except as permitted by subsection 65(3) of the PBA. On breakdown of the marriage or permanent relationship ("breakdown"), this exception permits the assignment, by an order under the *Family Law Act* or pursuant to a domestic contract as defined by Part IV of that *Act*, of an interest in the amount in a LIRA. Subsection 51(2) of the PBA provides that no more than 50% of the amount in the LIRA may be assigned to a former spouse or same-sex partner on breakdown.

Any portion of a LIRA that is assigned as a result of a court order on breakdown must continue to be administered as a pension or deferred pension. This means that the former spouse's or same-sex partner's share must be transferred to a locked-in account (LIRA, LIF or LRIF) or used to purchase a life annuity.

Money in a LIRA can be divided between the owner and the former spouse or same-sex partner but payments to the former spouse or same-sex partner cannot commence until the earlier of the date on which the LIRA owner (the former member) begins to receive payments from his or her locked-in account or life annuity or when the former member reaches his or her normal retirement date (usually at 65). That is, the action or age of the former member determines when the former spouse or same-sex partner of the former member can begin to receive payment from his or her LIRA.

No Differentiation on the Basis of Sex

Subsection 21(4) of the Regulation requires that the contract for the LIRA contain a statement as to whether the initial amount transferred to the LIRA was determined in a manner that differentiated on the basis of sex. This information is required because if an annuity is eventually purchased using the money in the LIRA, the annuity cannot differentiate on the basis of the sex of the LIRA owner unless the initial transfer amount was determined on a sex distinct basis. Locked-in money that represents the value of the pension earned on or after January 1, 1987 must be determined on a basis that does not differentiate on the basis of sex.

Applications for Withdrawal of Money from a LIRA for Shortened Life Expectancy

Before March 3, 2000, LIRA owners whose life expectancy was shortened considerably by reason of mental or physical disability were allowed to receive money from their LIRA in cash only if the pension plan from which the money originated contained a provision allowing for the variation of payment due to the shortened life expectancy of that person. If the plan contained such a provision, the LIRA was deemed to include the provision. This

exception to the locking-in rules still applies, and if available, the LIRA owner is responsible for satisfying the financial institution administering the LIRA that his or her former plan contained such a provision and that, based on medical evidence, the owner's life expectancy has been considerably shortened. The financial institution should determine whether a variation in payment is appropriate in the circumstances (i.e., it meets the criteria for shortened life expectancy set out in the original plan).

As of March 3, 2000, the Regulation was amended to provide for shortened life expectancy withdrawals for all LIRA owners (and owners of LIFs and LRIFs), regardless of whether or not their former pension plans contained shortened life expectancy provisions. Any LIRA owner may now apply to the financial institution to withdraw some or all of the money in the account if he or she is suffering from an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The application must be made on a form approved by the Superintendent of Financial Services (Form 5), signed by the owner of the LIRA, and accompanied by the following documents:

- Physician's statement

A statement signed by a physician, who is licensed to practice medicine in Canada, that in his or her opinion, the owner has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The physician may either fill in Part 5 of Form 5, or provide his or her opinion as to the owner's life expectancy in another written and signed format, such as a letter. If the physician does not fill in Part 5, the letter must include a statement that the physician is licensed to practice medicine in a jurisdiction in Canada.

- Consent of spouse or same sex partner

If the LIRA owner has a spouse or same-sex partner as of the date the application is signed, the spouse or same-sex partner must consent to the application before the money can be withdrawn. **The spouse or same-sex partner is not obligated to consent to the application.** If the spouse or same-sex partner agrees to consent, he or she must complete Part 4 of Form 5 in the presence of a witness (a person other than the LIRA owner).

Consent of a spouse or same-sex partner is not required if the LIRA owner and spouse or same-sex partner are living separate and apart, or if the money in the LIRA resulted from the pension benefit of someone other than the LIRA owner, such as the owner's former spouse or same-sex partner as a result of a breakdown between spouses or same-sex partners.

The completed application must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner and the spouse or same-sex partner, if applicable. Whether the application meets the requirements for withdrawal, including the adequacy of the physician's statement is determined by the financial institution. If the applicant qualifies for the withdrawal, the financial institution must pay the money within 30 days after it receives the completed application.

If the pension plan from which the money in the LIRA originated contained a variation of payment provision for shortened life expectancy, the LIRA owner has the choice of applying under the terms of the Regulation (and should use Form 5) **or** applying under the terms of the plan provisions and the LIRA contract (in which case, Form 5 does not apply). An example of a situation where the individual may

wish to apply under the pension plan provisions would be where the plan provided a more generous shortened life expectancy criteria (e.g., less than five years).

LIRA owners can only apply for the shortened life expectancy withdrawal under the rules described above if their LIRA is governed by the laws of Ontario. If the LIRA is governed by the laws of another province or the federal government, the shortened life expectancy relief described above is not applicable. If the owner is not sure, he or she should contact the administrator of the plan from which the pension originated or the financial institution administering the LIRA.

Applications for Withdrawal of Money from a LIRA of a Specified Amount at Age 55 or Over ("Small Amounts")

The locking-in rules present a problem when the amount in a LIRA is not sufficient to qualify for the purchase of a life annuity or when the amount is too small to purchase a LIF or LRIF. The problem is compounded when the owner reaches age 69, at which time the LIRA has to be de-registered under the ITA. The money then has to be transferred to a non-tax sheltered retirement vehicle but the locking-in provisions continue to apply.

Effective March 3, 2000, the owner of a LIRA may apply to withdraw all of the money in the LIRA if:

- The owner is at least 55 years old when he or she applies; and
- the value of all assets held in all of the owner's Ontario LIRAs, LIFs and LRIFs is less than 40% of the Year's Maximum Pensionable Earnings (YMPE) for the calendar year in which the application is made. (For the year 2002, this amount is 40% of $39,100 (the YMPE for 2002) = $15,640.)

The value of the assets held in each Ontario LIRA, LIF and LRIF must be based on the most recent statement given to the owner by the financial institution, and the statement must not be dated more than one year before the date the application is signed.

The application must be made on a form approved by the Superintendent of Financial Services (Form 5) and signed by the owner of the LIRA. If the LIRA owner has a spouse or same-sex partner as of the date the application is signed, the spouse or same-sex partner must consent to the application before the money can be withdrawn. **The spouse or same-sex partner is not obligated to consent to the application**. If the spouse or same-sex partner agrees to consent, he or she must complete Part 4 of Form 5 in the presence of a witness (someone other than the LIRA owner).

Consent of a spouse or same-sex partner is not required if the LIRA owner and spouse or same-sex partner are living separate and apart, or if the money in the LIRA resulted from the pension benefit of someone other than the LIRA owner, such as the owner's former spouse or same-sex partner as a result of a breakdown between spouses or same-sex partners.

The completed application must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner and the spouse or same-sex partner, if applicable. Whether the application meets the requirements for withdrawal is determined by the financial institution. If the applicant qualifies for the withdrawal, the financial institution must pay the money within 30 days after it receives the completed application.

LIRA owners can only apply for the small amount withdrawal under the rules described

above if their LIRA is governed by the laws of Ontario. If the LIRA is governed by the laws of another province or the federal government, these rules do not apply. If the owner is not sure, he or she should contact the administrator of the plan from which the pension originated or the financial institution administering the LIRA.

Applications for Withdrawal of Money from a LIRA for Amounts that Exceed ITA Limits

The ITA imposes a limit on the amount that a former member may transfer from a registered pension plan to a locked-in account on a tax-deferred basis when a former member terminates employment or terminates membership in the plan. Amounts transferred that do not exceed the ITA limit can only be transferred to a locked-in account. Effective March 3, 2000, if the amount of the commuted value of an individual's deferred pension that is to be transferred to a locked-in account is greater than the amount allowed under the ITA for such a transfer, the administrator must pay the excess amount to the individual in a lump sum.

However, if an amount that exceeds the ITA limit has already been transferred to a LIRA, the owner may apply to the financial institution to withdraw in cash the excess amount and any subsequent investment earnings, including any unrealized capital gains or losses that are attributable to the excess amount, or to transfer that amount to a non-locked-in vehicle. It is up to the financial institution that administers the account to calculate the aggregate amount to be withdrawn.

The application must be made on a form approved by the Superintendent (Form 5) and must include a written statement from either the administrator of the owner's former pension plan or the Canadian Customs and Revenue Agency ("CCRA") that sets out the excess amount that was transferred into the LIRA. The consent of a spouse or same-sex partner is not necessary.

The completed application must be submitted to the financial institution which administers the LIRA within 60 days after the date on which it was signed by the owner. The financial institution is required to make payment to the owner within 30 days after receipt of the completed form and accompanying document.

Frequently Asked Questions about LIRAs

What is the earliest age on which payments from a life annuity purchased from a LIRA can begin?

If the LIRA owner chooses to purchase a life annuity, he or she is not required to wait until age 65 to begin to receive payments. The first income payment under the annuity must not begin before the earlier of the earliest date on which the former member is entitled to receive pension benefits under the PBA (normally age 55) or the earliest date on which the former member is entitled to receive pension benefits under any pension plan from which the money was transferred.

If money in a LIRA is used to purchase a LIF or LRIF, what are the earliest and latest dates that money can be transferred?

The earliest age that an individual can purchase a LIF or LRIF is generally 55 but could be earlier depending upon the age at which members may receive a benefit under the terms of the pension plan from which the money originated. Payments from a LIF or a LRIF must begin no later than the end of the second fiscal year of the LIF or LRIF. Accordingly, the money in the LIRA can be transferred to the LIF or LRIF at age 54 or earlier if the plan so provides.

Can funds in an Ontario LIRA be transferred to a RRIF?

No. The proceeds from an Ontario LIRA must be used to provide either a life annuity, a LIF or a LRIF so that the owner will receive regular payments when his or her earnings have stopped. Since one can outlive a RRIF, transferring the money in a LIRA to a RRIF would not achieve this objective.

Can money in an Ontario LIRA be transferred or combined with locked-in money from another jurisdiction?

Because some of Ontario's statutory requirements differ from those of other Canadian pension jurisdictions, the contract for an Ontario LIRA will likely differ from the contract for a LIRA of another jurisdiction. Consequently, locked-in money that is required to be administered in accordance with the Ontario PBA may not be transferred to or combined with a locked-in account of another pension jurisdiction.

Does the holding of an investment which is not redeemable before maturity restrict the date on which the owner of a LIRA may purchase a life annuity, LIF or LRIF with the money in the LIRA?

Owners of LIRAs may purchase an annuity, LIF or LRIF before the expiry of the term of an investment at the discretion of the financial institution. Owners making investment decisions should be mindful that CCRA requires all RRSPs, including LIRAs, to be de-registered before age 69.

Can money in a LIRA be released to fund the purchase of a home under the federal government's Home Buyers' Plan, introduced in 1992?

No. In Ontario, monies in LIRAs cannot be loaned to buy a house to take advantage of the federal Home Buyers' Plan.

SUPERINTENDENT OF FINANCIAL SERVICES

Notices of Proposals to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;
AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997, S. O. 1997*, c. 28, respecting the **Pension Plan for Employees of JPE Canada, Inc. who are members of C.A.W. Locals 1524 and 1987, Registration Number 694570;**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
P.O. Box 82
Toronto ON M5K 1G8

Attention: Ms. Lois J. Reyes
Administrator

AND TO: **JPE Canada, Inc.**
775 Technology Drive
P.O. Box 660
Peterborough ON K9J 6Z8

Attention: Mr. Robert Tock
Employer

AND TO: **Grant Thornton LLP**
The Royal Bank Plaza
South Tower, 19th Floor
200 Bay Street
P.O. Box 55
Toronto ON M5J 2P9

Attention: Ms. Andrea Orr
Trustee in Bankruptcy

AND TO: **C.A.W. – Local 1524**
654 Rogers Street
Peterborough ON K9H 1Y2

Attention: Ms. Rose Forestall, President
C.A.W. – Local 1987
600 Wabanaki Drive
Kitchener ON N2C 2K4

Attention: David Bailey, President
C.A.W. Canada
205 Placer Court
North York ON M2H 3H9

Attention: Tom Murphy,
National Representative
Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of JPE Canada, Inc. who are members of C.A.W. Locals 1524 and 1987, Registration No. 694570 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Plan on July 16, 1999; and
4. The Plan was wound up effective February 9, 1999;

NOW THEREFORE TAKE NOTICE that I propose to consider to make a declaration, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at windup was estimated to be 44.32% with an estimated claim against the Guarantee Fund at windup of $1,155,965.
2. The estimated claim against the Guarantee Fund at May 31, 2001 is $1,464,740.
3. The employer, JPE Canada, Inc., made an assignment in bankruptcy on February 8, 1999.
4. The trustee in bankruptcy for JPE Canada, Inc. has advised the Administrator that there are no funds available from the estate of JPE Canada, Inc. to make payment to the Plan.
5. The purchaser of the assets of JPE Canada, Inc. did not provide a new registered pension plan nor did they continue or assume the Plan.
6. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 16th day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

[1] NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for the Hourly Employees of Usarco Limited, Registration Number 0597393 (previously C-15367)** (the "Pension Plan");

TO: **Ernst & Young Inc.**
Ernst & Young Tower
Toronto-Dominion Centre
222 Bay Street
P.O. Box 251
Toronto ON M5K 1J7

Attention: Mr. Brian Denega
Senior Vice-President
Administrator of the Pension Plan for the Hourly Employees of Usarco Limited

AND TO: **Usarco Limited**
363 Wellington Street North
Hamilton ON L8L 5B2
Employer

AND TO: **PricewaterhouseCoopers Inc.**
(formerly Coopers & Lybrand)
Commerce Court West, Suite 3300
Station Commerce Court
P.O. Box 31
Toronto ON M5L 1B2

Attention: Roxanne Anderson
Receiver and Manager
Usarco Limited

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for the Hourly Employees of Usarco Limited, Registration No. 0597393 (previously C-15367) (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "*Act*"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective July 31, 1990; and
4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Pension Plan on September 13, 1990.

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement Report to the Revised Actuarial Report filed by the Administrator indicates an estimated funding deficiency of $1,713,600 as at December 31, 2000.
2. PricewaterhouseCoopers Inc. was appointed Receiver and Manager of Usarco Limited on October 11, 1990.
3. The Administrator has advised that they were successful in collecting $509,558.24 of unpaid contributions from the Receiver and Manager for the Pension Plan and are of the opinion that there are no further funds

expected from the Receiver and Manager or from any other known sources.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 31st day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

[1]NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Technical Service Council, Registration Number 0313452;**

TO: **Deloitte & Touche Inc.**
c/o Morneau Sobeco Inc.
1500 Don Mills Road, Suite 500
Toronto ON M3B 3K4

Attention: B. Bethune A. Whiston
Principal
Applicant

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment out of the Pension Plan for Employees of Technical Service Council, Registration No. 0313452 (the "Plan"), to Deloitte & Touche Inc., Trustee in Bankruptcy for the Estate of Technical Service Council, in the amount of $277,882 as at January 31, 2001, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the payment of the members' share of the negotiated surplus has been made.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Applicant is the Trustee in Bankruptcy of Technical Service Council (the employer as defined in the Plan).
2. The Plan was wound up, effective July 15, 1994.
3. As at January 31, 2001, the surplus in the Plan was estimated at $635,885.
4. The Plan provides for payment of surplus to the Employer on the windup of the Plan.
5. The application discloses that by written agreement made by the Applicant, and 92% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of windup expenses is to be distributed:
   a) 43.7% to the Applicant; and
   b) 56.3% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 43.7% of the surplus as at January 31, 2001, plus investment earnings to the date of payment.
7. The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 2nd day of November, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario
cc: Paul Macphail
PricewaterhouseCoopers Inc.

[1]NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, in respect of the **Retirement Plan Sponsored by Diversified International Products Ltd. for Bruce McLarty, Registration Number 1022482;**

TO: **William M. Mercer Limited**
BCE Place
161 Bay Street
P.O. Box 501
Toronto ON M5J 2S5

Attention: William K. Simon
Administrator

AND TO: **Diversified International Products Ltd.**
66 West Wilmot Street
Richmond Hill ON L4B 1H8

Attention: Bruce McLarty, President
Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Retirement Plan Sponsored by Diversified International Products Ltd. for Bruce McLarty under subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*").

PROPOSED ORDER:

The Retirement Plan Sponsored by Diversified International Products Ltd. for Bruce McLarty, Registration No. 1022482 (the "Plan"), be wound up in whole effective February 19, 1999.

REASONS FOR THE ORDER:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the *Act*.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations, pursuant to clause 69(1)(b) of the *Act*.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
4. A significant number of members of the Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer, pursuant to clause 69(1)(d) of the *Act*.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the *Act*.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

BDO Dunwoody LLP
Royal Bank Plaza
200 Bay Street, 32nd Floor
P.O. Box 33
Toronto ON M5J 2J9

Attention: D. R. McConnell
Vice President
Trustee in Bankruptcy and Receiver and Manager for Diversified International Products Ltd.

DATED at North York, Ontario, this 13th day of November, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

'NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Beatrice Foods, Inc., Registration Number 279430**;

TO: **Parmalat Dairy & Bakery, Inc.**
405 The West Mall
Etobicoke ON M9C 5J1

Attention: Mr. John Dalton
Vice President, Compensation & Benefits
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment out of the Pension Plan for Employees of Beatrice Foods, Inc., Registration No. 279430 (the "Plan"), to Parmalat Dairy & Bakery, Inc. in the amount of $611,900 as at April 24, 1999, adjusted as to reflect investment earnings and losses, other actuarial gains and losses, and expenses.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and any other payment to which members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Parmalat Dairy & Bakery, Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective April 24, 1999.
3. As at April 24, 1999, the surplus in the Plan was estimated at $611,900.
4. The Plan provides for payment of surplus to the Employer on the windup of the Plan.
5. The application discloses that by written agreement made by the Employer, the Union and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of windup expenses is to be distributed in the amount of 100% to the Employer.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan adjusted to reflect investment earnings and losses, other actuarial gains and losses, and expenses thereon to the date of payment.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 29th day of November, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

cc: Rita Vassallo, Watson Wyatt Canada

[1]NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Ilford Anitec (Canada) Ltd. Plan B Employees' Pension Plan, Registration Number 481218;**

TO: **Kodak Polychrome Graphics LLC**
401 Merrit 7
Norwalk CT 06851

Attention: Mr. John B. Wooley
Director of Human Resources
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment out of the Ilford Anitec (Canada) Ltd. Plan B Employees' Pension Plan, Registration No. 481218 (the "Plan"), to Kodak Polychrome Graphics LLC in the amount of $164,850 as of December 31, 1998, subject to adjustment for investment earnings or losses and expenses, to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Kodak Polychrome Graphics LLC is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 1998.
3. As at December 31, 1998, the surplus in the Plan was estimated at $329,700.
4. The Plan provides for payment of surplus to the Employer on the windup of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of windup expenses is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding investment earnings and deducting expenses related to the windup of the Plan).
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 5th day of December, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario
cc: Mr. Robert G. Coyle

[1]NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration Number 0582668 (previously C-14740)** (the "Pension Plan");

TO: **Deloitte & Touche Inc.**
c/o Morneau Sobeco
1500 Don Mills Road, Suite 500
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner
Administrator of the Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited

AND TO: **Bakelite Thermosets Limited**
621 Dundas Street East
Belleville ON K8N 5C5

Attention: K.W. Whitney
Treasurer
Employer

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration No. 0582668 (previously C-14740) (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the *"Act"*); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective March 31, 1990 by the Employer; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on March 20, 1997.

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Addendum to the Supplemental Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of $121,000 as at December 31, 2001.
2. The place of business of the Employer is closed.
3. The Administrator has advised that since the Employer is no longer in business, there are no further funds expected from the Employer or from any other sources for the Pension Plan.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 13th day of December, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

[1] NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Act*, in respect of the **Employee Retirement Plan for the Employees of Bestway Truck Centre Division of 604888 Ontario Inc., Registration Number 0958942;**

TO: **London Life Insurance Company**
Group Retirement Services
255 Dufferin Avenue
London ON N6A 4K1

Attention: Nancy Galpin, Windup Specialist
Aministrator of the Plan

AND TO: **Bestway Truck Centre Division of 604888 Ontario Inc.**
North Bay Stn. Main
Highway 11s at Fisher Street
P.O. Box 1170
North Bay ON P1B 8K4

Attention: Peter Woodgate, Office Manager
Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Employee Retirement Plan for the Employees of Bestway Truck Centre Division of 604888 Ontario Inc., Registration No. 0958942, under subsection 69(1) of the *Act*.

PROPOSED ORDER:

I order that the Employee Retirement Plan for the Employees of Bestway Truck Centre Division of 604888 Ontario Inc., Registration No. 0958942, be wound up in whole effective March 1, 2000.

REASONS FOR THE ORDER:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the *Act*.
2. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

[1]NOTE - PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

PricewaterhouseCoopers Inc.
5700 Yonge St., Suite 1900
North York ON M2M 4K7

Attention: David Filice
Vice President
Receiver and Manager for Bestway Truck Centre Division of 604888 Ontario Inc.

A. Farber & Partners Inc.
1200 Sheppard Ave. East
North York ON M2K 2R8

Attention: Avron Mintz
Trustee in Bankruptcy for Bestway Truck Centre Division of 604888 Ontario Inc.

DATED at North York, Ontario, this 21st day of December, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., Registration Number 1036029**;

TO: **Arthur Andersen LLP**
4 King Street West, Suite 1050
Toronto ON M5H 1B6

Attention: Lawrence A. Contant
Manager
Administrator

AND TO: **Alloy Wheels International (Canada) Ltd.**
49 Truman Road
P.O. Box 13000
Barrie ON L4M 6E7

Attention: Joan Oickle
Compensation and Benefits Coordinator
Employer

NOTICE OF PROPOSAL

I PROPOSE TO ORDER in respect of the Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., Registration No. 1036029 (the "Plan"), under section 69 of the *Act*.

PROPOSED ORDER:

An order that the Plan be wound up in whole effective January 19, 2001.

REASONS FOR THE ORDER:

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. Alloy Wheels International (the "Employer") failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*, R.S. 1985, c.B-3, as amended as set out in clause 69(1)(c) of the *Act*.
4. A significant number of members of the Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer, within the meaning of clause 69(1)(d) of the *Act*.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued, within the meaning of clause 69(1)(e) of the *Act*.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(2, 3, etc.), to transmit a copy of this Notice of Proposal to the following persons:

Deloitte & Touche LLP
BCE Place
181 Bay Street, Suite 1400
Toronto ON M5J 2V1

Attention: David Murray
Partner
Trustee in Bankruptcy for Alloy Wheels International (Canada) Ltd.

DATED at North York, Ontario, this 24th day of January, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

cc: **CAW Canada – Local 1991**
178 Dunlop Street
Barrie ON L4M 4S6

Attention: Ed Little
President
Skill Trades Representative

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the *Act* respecting a request by Mr. Marcel Brousseau relating to the **Electrical Industry of Ottawa Pension Plan, Registration Number 0586396** (the "Plan");

TO: **Marcel Brousseau**
222 Monfort Street
Vanier ON K1L 5P4

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER in respect of the Plan administrator's determination of Mr. Brousseau's pensionable service under the terms of the Plan, pursuant to section 87 of the *Act*.

REASONS:

1. Marcel Brousseau is a member of the Plan.
2. The Plan is a multi-employer pension plan administered by the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Trustees"). It covers members of the International Brotherhood of Electrical Workers, Local 586 ("IBEW, Local 586").
3. Mr. Brousseau has been a member of IBEW, Local 586, since 1964.
4. Mr. Brousseau worked for a participating employer of the Plan from January 1, 1974 to the present, except during a twenty-two month period between November 1983 and August 1985, when he was on temporary lay-off.
5. While he was laid off, Mr. Brousseau worked for Metcalfe Realty, an employer who did not participate in the Plan. Mr. Brousseau maintained his membership in IBEW, Local 586, throughout this period.
6. The Trustees refused to credit Mr. Brousseau with service during the lay-off period. Mr. Brousseau does not agree that a break in service has occurred, and requests that the Superintendent of Financial Services (the "Superintendent"), issue an order that he receive credit for continuous service.
7. Mr. Brousseau claims a pension based on continuous service and refers to the provisions of Article XI of the 1998 Constitution of the International Brotherhood of Electrical Workers.
8. The Constitution governs the international union and the pension plan administered and provided by the international union to its employees. It does not govern the provision of benefits under pension plans created and administered by local unions.
9. The Trustees based their decision on Article IV of the Welfare Plan and Declaration of Trust document (the Plan "Declaration of Trust"), made October 1, 1962 and revised September 1, 1977. This provides:

   Insurance Coverage During Unemployment
   If the employment of an Employee is terminated by the *Act* of a contractor and while such Employee is a member of the Local, all insurance benefits hereunder shall be continued in force by the Trustees for a period of ninety days after cessation of such employment or longer at the discretion of the Trustees. Employees must be ready, willing and able to work in the electrical industry to remain eligible for the insurance benefits under the Plan.

10. Article V of the Declaration of Trust provides at subparagraph 4:
Authority of the Trustees: Subject to the stated purposes of the Plan and the provisions of this Agreement the Trustees shall have full authority to determine all questions of coverage and eligibility. They shall have the power to construe the provisions of this agreement and the terms used herein. Any such determination or such construction adopted in good faith shall be binding upon all parties and beneficiaries hereto.
11. The Plan text, in effect as of January 1, 1985, provides at section 1(j):
"ELIGIBLE SERVICE" means the period of an Employee's employment commencing with the Employee's Entry Date, and ending with the termination of his employment by ... retirement, by withdrawal from service or by death. Any ... leave of absence for which remuneration is not received shall not be Eligible Service for the purpose of this Plan.
12. The Plan text provides at section 3:
For the purposes of this Plan, matters as to the continuity of Eligible Service of a Participant who has been re-employed by a participating employer shall be determined solely by the Trustees.
Without limiting the generality of the foregoing, where a Participant who has terminated his participation in the Plan and becomes entitled to a vested paid-up deferred annuity as provided in Section 9 of the Plan subsequently again becomes an eligible Participant in the Plan he shall be created as a new Participant for purposes of future pension benefit accruals except that the period of Eligible Service on which his vested paid-up deferred annuity was based shall be recognized for the purposes of establishing his eligibility for future vesting under the Plan. ...
13. Section 9 of the Plan text provides, in part:
A participant whose service with a participating employer or whose membership in Local 586 of the International Brotherhood of Electrical Workers terminates for reasons other than his death or retirement shall be entitled to receive a paid-up deferred annuity ...
14. Section 16 of the Plan text provides, in part:
All matters relating to the administration or operation of the Plan shall be determined solely by the Trustees including, and without limiting the generality of the foregoing, matters as to Eligible Service and Eligibility. ...
15. In applying the provisions of the 1985 Plan text and 1977 Declaration of Trust to Mr. Brousseau's situation, the Trustees have administered the Plan in compliance with requirements of the *Act*, the regulations, and the filed documents in respect of which the Superintendent has issued a certificate of registration.
16. Subsection 87(2) of the *Act* allows the Superintendent to make an Order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the regulations or the pension plan.
17. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 24th day of January, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

[1]NOTE – PURSUANT TO section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

Orders that Pension Plans be Wound Up

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Act*, respecting the **Pension Plan for Executives of William H. Kaufman Inc., Registration Number 999631** (the "Plan");

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West
Montreal PQ H3G 1G3

Attention: Jean-Claude Lebel
Pension Actuary
Administrator

AND TO: **William H. Kaufman Inc.**
Kitchener Stn. C
410 King St. West
P.O. Box 9005
Kitchener ON N2G 4J8

Attention: Stuart Snyder
Secretary Treasurer
Employer

ORDER

ON the 17th day of August 2001, the Superintendent of Financial Services issued to William H. Kaufman Inc. (the "Employer") and to Standard Life Assurance Company, the administrator of the Plan (the "Administrator"), pursuant to section 69(1) of the *Act*, a Notice of Proposal to Make an Order that the Plan be wholly wound up effective July 21, 2000.

NO REQUEST for a hearing from the Employer or from the Administrator has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Pension Plan for Executives of William H. Kaufman Inc., Registration No. 999631, be wholly wound up effective July 21, 2000.

THE REASONS for this order are:

1. There was a cessation or suspension of Employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. The Employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R. S. C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
4. A significant number of members of the Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer within the meaning of clause 69(1)(d) of the *Act*.
5. All or a significant portion of the business carried on by the Employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.

THE ADMINISTRATOR IS REQUIRED pursuant to section 69(2) of the *Act*, to give notice of this Order to the following persons:

Ernst & Young Inc.
Toronto-Dominion Centre
222 Bay Street
P.O. Box 251
Toronto ON M5K 1J7

Attention: Philip Kan
Interim Receiver and Receiver and Trustee in Bankruptcy for William H. Kaufman Inc.

DATED at North York, Ontario, this 14th day of November, 2001.

Tom Golfetto
Director, Pension Plans Branch (A)
By Delegated Authority from
K. David Gordon,
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "*Act*"), as amended;

AND IN THE MATTER OF an Amendment effective January 1, 2000, to the **Pension Plan for Employees of Engel Canada Inc., Registration Number 446393;**

TO: **Engel Canada Inc.**
545 Elmira Road
Guelph ON N1K 1C2

Attention: Mr. Bill Rowe
Human Resources Manager
Administrator and Employer

ORDER

ON August 3, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Refuse to Register an Amendment (the "Notice of Proposal") to the Employer and Administrator of Pension Plan for Employees of Engel Canada Inc., Registration No. 446393 (the "Plan"), pursuant to section 18 of the *Act*, that the request to register Amendment Number 4 to the Plan, effective January 1, 2000 (the "Amendment"), be refused.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the request to register the Amendment be refused.

REASONS:

1. The Plan is a defined contribution pension plan. On or about September 29, 1999, the Board of Directors for the Employer passed a resolution approving Amendment Number 4 to the Plan (the "Amendment") effective January 1, 2000. The Amendment modifies the Plan to eliminate required employee contributions and institutes employer contributions calculated on the basis of the amount of employee contributions to a separate Group Registered Retirement Savings Plan. In addition, the Amendment purports to reclassify all required member contributions made prior to January 1, 2000, as voluntary contributions.
2. Subsection 18(1)(d) of the *Act* permits the Superintendent to refuse to register an amendment "if the amendment is void or if the pension plan with the amendment would cease to comply with this *Act* and the regulations."
3. Subsection 63(1) of the *Act* states that no member or former member is entitled to a refund of contributions from a pension plan. However, subsection 63(2) specifically permits the refund of additional voluntary contributions. Notwithstanding subsection 63(1), subsection 63(7) states that contributions may be refunded with the consent of the Superintendent. Subsection 63(8) states that such consent may be provided if the pension plan provides for the refund "and the employer has assumed responsibility for funding all pension benefits associated with the contributions."
4. The Financial Services Commission of Ontario (FSCO) Policy R400-101, entitled "Application for Refund to Plan Members or Former Members," states that where a plan has been amended to deem required contributions to be additional voluntary contributions, the requirements of subsection 63(8) will apply.
5. Required contributions that are subsequently deemed to be additional voluntary contributions through an amendment to the plan are not additional voluntary contributions within the meaning of the

Act. Section 1 defines additional voluntary contributions as contributions to the pension plan beyond any amount that the member is required to contribute and does not include a contribution in relation to which the employer is required to make a concurrent additional contribution to the pension fund. The contributions that are the subject of the Amendment were required contributions under section 4 of the Plan at the time that they were made. In addition, the Employer's contribution, under section 4 of the Plan, was calculated as a prescribed percentage of the employee's contribution and therefore is a contribution in relation to which the Employer was required to make a concurrent additional contribution. As such, subsection 63(2) of the *Act* does not apply to the Amendment and the provisions of subsection 63(8) are applicable.

6. The Employer takes the position that it will not assume responsibility for funding all pension benefits associated with the deemed additional voluntary contributions. The Amendment, therefore, does not comply with subsection 63(8) of the *Act*.
I therefore propose to refuse to register the Amendment under subsection 18(1)(d) of the *Act* because the Plan with the Amendment would cease to comply with the *Act*, specifically section 63 of the *Act*.
7. Such further and other reasons as may come to my attention.

DATED at North York, Ontario, this 14th day of December, 2001.

Tom Golfetto
Director, Pension Plans Branch (A)
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario

cc: **Ian Bedford, Wayne Cavasin, Joe Kuzel, John Ness and Bill Rowe**
545 Elmira Road
Guelph ON N1K 1C2

Engel Canada Pension Committee Members
Robertson Eadie & Associates
407 Speers Road, Suite 211
Oakville ON L6K 3T5

Attention: Mr. Stephen Eadie
Actuary for the Administrator and Employer

Consents to Payment of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Ebasco Services of Canada Ltd. Salaried Employees Retirement Plan, Registration Number 0546093;**

TO: **Ebasco Services of Canada Ltd.**
c/o TXU Gas Company
1601 Bryan Street
Dallas, TX
75201-3411

Attention: John F. Stephens, Jr.
Assistant Secretary of TXU Gas Company
Applicant and Employer

CONSENT

ON or about August 27, 2001, the Superintendent of Financial Services caused to be served on Ebasco Services of Canada Ltd. a Notice of Proposal dated August 20, 2001. The Superintendent proposed, pursuant to subsection 78(1) of the *Act*, to consent to payment to Ebasco Services of Canada Ltd., out of the Ebasco Services of Canada Ltd. Salaried Employees Retirement Plan, Registration No. 0546093 (the "Plan"), in the amount of $161,090 plus investment earnings minus expenses incurred thereon to the date of payment.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or by any other party, within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Plan of $161,090 plus investment earnings minus expenses incurred thereon to Ebasco Services of Canada Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies the Superintendent that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at North York, Ontario, this 31st day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

cc: Mr. Jeff Chuchman
Financial Services Commission of Ontario

Mr. Duncan B. Richardson
William M. Mercer Limited

Mr. Naso S. Janovsky
1233 Scottsburg Cres.
Mississauga ON L4W 2Z9

Mr. C.W. So
23 Kerbar Road
Scarborough ON M1V 1G2

Mr. Ronald C. Chambers
6 Willowgate Drive
Markham ON L3P 1G2

Mr. Maurice Titmuss
6233 191A Street
Surrey BC V3S 8C6

Mr. Gerald P. Barron
67 Dewlane Drive
Willowdale ON M2R 2P9

Mr. Robert Rollinson-Lorimer
566 Hawthorne Cres.
Milton ON M9T 4N8

Mr. Bharat Mohan Kukreti
88 Harvest Moon Drive
Markham ON L3R 4L6

Mr. R. Mitchell
4044 Powderhorn Court
Mississauga ON L5L 3C4

Mr. Basil W. Pearce
1800-55 Kingsbridge
Garden Circle
Unit 53
Mississauga ON L5R 1Y1

Mr. Ronaldo V. Olay
1492 Islington Avenue
Etobicoke ON M9A 3L5

Mr. W. Milczyn
513-2313 Lakeshore Blvd. W.
Toronto ON M8V 1A8

Mr. Patrick Kam
69 Canlish Road
Scarborough ON M1P 1S6

Mr. Michael M. Salamon
256 Armour Blvd.
North York ON M3H 1N3

Mr. Miguel Hortiguela
331 Trudelle Street
Scarborough ON M1J 3J9

Mr. Robert Cudden
43 Tremont Crescent
Don Mills ON M3B 2R9

Mr. Pinaki Ranjan Roy
77 Howard Street
Apartment 905
Toronto ON M4X 1J9

Mr. George Poulos
369 Ellis Park Road
Toronto ON M6S 2V7

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the *"Act"*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Consolidated Pension Plans for Employees of Reichhold Limited, Registration Number 374454;**

TO: **Reichhold Limited**
c/o Reichhold, Inc.
Research Triangle Park
P.O. Box 13582
Raleigh Durham, North Carolina
27709-3582
U.S.A.

Attention: Trent Rhyne
Compensation and Benefits
Director
Applicant and Employer

CONSENT

ON or about October 10, 2001, the Superintendent of Financial Services caused to be served on Reichhold Limited a Notice of Proposal dated October 10, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Consolidated Pension Plans for Employees of Reichhold Ltd., Registration No. 374454 (the "Plan"), to Reichhold Ltd. as follows:

a) an amount shall be paid or allocated to the Applicant equal to:

i) $1,353,567, the value of the liabilities as determined by the Plan Actuary in consultation with the actuary for the Plan members for early retirement benefits as negotiated and grow-in benefits required to be provided under the *Pension Benefits Act*, R.S.O. 1990, for Ontario members, which pursuant to the Surplus Sharing Settlement Agreement shall be provided to all eligible employees of the Applicant accruing benefits under the Plan at any time in the period from November 13, 1998 through the Plan windup date (April 30, 2000) regardless of jurisdiction of residence or employment and grow-in benefits as negotiated by the collective bargaining agents together with interest thereon from the date as at which each value is determined to the date of payment or allocation to the Applicant at the rates of interest used to determine the liability as follows:

Interest Rate	**Value of Liabilities**
6.5% per annum	$ 785,014
5.0% per annum	279,023
5.75% per annum	289,530
Total	**$1,353,567**

plus

ii) $7.25 million as at April 30, 2000 together with interest thereon at the rate of 6.5%, being the rate of return used to determine the Plan's liability for transfer values as determined by the Actuary from April 30, 2000, to the date of payment;
plus

iii) 50% of the surplus remaining after making provisions for the payments contemplated in (i) and (ii) above together with net earnings or losses thereon (estimated to be, as at April 30, 2000, $10,580,154).

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Consolidated Pension Plans for Employees of Reichhold Limited, Registration No. 374454, to Reichhold Limited of the amounts under (a)(i), (ii) and (iii) above.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the basic benefit entitlements of all member and former members have been annuitized, paid out or otherwise provided for.

DATED at North York, Ontario, this 28th day of November, 2001.

Tom Golfetto
Director, Pension Plans Branch (Acting)
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario
cc: Kim Ozubko
Blake, Cassels & Graydon LLP

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of The Tarmac Canada Incorporated **Pension Plan for Employees of Tarmac Minerals Canada Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration Number 255091**;

TO: **Tarmac Canada Inc.**
80 North Queen St.
Toronto ON M8Z 5Z6

Attention: Mr. Randy Roe
Vice-President, Finance
Applicant and Employer

CONSENT

ON or about October 10, 2001, the Superintendent of Financial Services caused to be served on Tarmac Canada Inc. a Notice of Proposal dated October 5, 2001 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of The Tarmac Canada Inc. Pension Plan for Employees of Tarmac Minerals Canada Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration No. 255091 (the "Plan"), to Tarmac Canada Inc. in the amount of $70,957 as at December 15, 1997, less 50% of the expenses, plus 50% of the investment earnings to the date of payment.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of The Tarmac Canada Inc. Pension Plan for Employees of Tarmac Minerals Canada Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration No. 255091, to Tarmac Canada Inc. in the amount of $70,957 as at December 15, 1997, less 50% of the expenses, plus 50% of the investment earnings to the date of payment.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the entitlements of all members, former members and other sharing persons have been settled.

DATED at North York, Ontario, this 28th day of November, 2001.

Tom Golfetto
Director, Pension Plans Branch (A)
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario

cc: Doug Andrews, Aon Consulting Inc.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Procter & Gamble Core Pension Plan, Registration Number 681163;**

TO: **Mr. Peter Beca, F.C.I.A.**
Senior Vice President
Aon Consulting Inc.
145 Wellington Street West,
Suite 500
Toronto ON M5J 1H8
for Procter & Gamble Inc.
P.O. Box 355, Station "A"
Toronto ON M5W 1C5

Attention: Mr. David J. McKenzie,
Associate Director, Human Resources
Applicant and Employer

CONSENT

ON or about October 12, 2001, the Superintendent of Financial Services caused to be served on Procter & Gamble Inc. a Notice of Proposal dated October 11, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Procter & Gamble Core Pension Plan, Registration No. 681163 (the "Plan"), to Procter & Gamble Inc. in the amount of approximately $836,800 as at January 31, 1999, adjusted for all fees and expenses attributable to the partial windup effective January 29, 1999, resulting from the closure of the Hamilton plant, plus investment earnings to date of payment on all of the surplus attributable to said partial windup.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Procter & Gamble Core Pension Plan, Registration No. 681163, of approximately $836,800 as at January 31, 1999, adjusted for fees and expenses attributable to the partial windup effective January 29, 1999, plus investment earnings to date of payment on all of the surplus attributable to said partial windup to Procter & Gamble Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the administrator of the Plan has provided for the payment of all liabilities of the Plan, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the Plan.

DATED at North York, Ontario, this 4th day of December, 2001.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario

cc: Mr. David J. McKenzie
Procter & Gamble Inc.
Mr. Paul W. Litner
Osler, Hoskin & Harcourt LLP

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997*, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Staff Pension Plan for the Employees of 733907 Ontario Ltd., Registration Number 597245;**

TO: **733907 Ontario Ltd.**
14 Westwin Court
Brampton ON L6T 4T5

Attention: Mr. Morris Leider
President
Applicant and Employer

CONSENT

ON or about October 15, 2001, the Superintendent of Financial Services caused to be served on 733907 Ontario Ltd., a Notice of Proposal dated October 11, 2001, to consent pursuant to subsection 78(1) of the *Act*, to payment out of the Staff Pension Plan for the Employees of 733907 Ontario Ltd., Registration No. 597245 (the "Plan"), to 733907 Ontario Ltd. in the amount of $25,405.78 as at July 31, 2000, adjusted for expenses plus investment earnings thereon to the date of the payment.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE consents to the payment out of the Staff Pension Plan for the Employees of 733907 Ontario Ltd., Registration No. 597245, of $25, 405.78 as at July 31, 2000, adjusted for expenses plus investment earnings thereon to the date of the payment, to 733907 Ontario Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the sole member's entitlement from the plan surplus has been transferred out of the Plan and paid to the member.

DATED at North York, Ontario, this 18th day of December, 2001.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario

cc: Timothy B. Lawrence
F.S.A., F.C.I.A., Wright, Mogg & Associates Limited

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of Beatrice Foods, Inc., Registration Number 279430;**

TO: **Parmalat Dairy & Bakery, Inc.**
405 The West Mall
Etobicoke ON M9C 5J1

Attention: Mr. John Dalton
Vice President, Compensation & Benefits
Applicant and Employer

CONSENT

ON or about December 3, 2001, the Superintendent of Financial Services caused to be served on Parmalat Dairy & Bakery, Inc. a Notice of Proposal dated November 29, 2001 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Pension Plan for Employees of Beatrice Foods, Inc., Registration No. 279430 (the "Plan"), to Parmalat Dairy & Bakery, Inc. in the amount of $611,900 as at April 24, 1999, adjusted to reflect investment earnings and losses, other actuarial gains and losses, and expenses.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Employees of Beatrice Foods, Inc., Registration No. 279430, to Parmalat Dairy & Bakery, Inc. in the amount of $611,900 as at April 24, 1999, adjusted to reflect investment earnings and losses, other actuarial gains and losses, and expenses.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits and any other payment to which members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at North York, Ontario, this 23rd day of January, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario
cc: Rita Vassallo
Watson Wyatt Canada

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration Number 1050210**;

TO: **Beta Brands Limited**
1156 Dundas Street East
London ON N5W 5Y4

Attention: Mr. George Harrison
Chief Financial Officer and Secretary

CONSENT

ON or about November 28, 2001, the Superintendent of Financial Services caused to be served on Beta Brands Limited a Notice of Proposal dated November 21, 2001 to consent, pursuant to subsection 78(4) of the *Act*, to payment out of The Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210, to Beta Brands Limited in the amount of $36,619 as at June 30, 2001, plus investment earnings thereon to the date of payment.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of The Retirement Plan for Certain Unionized Employees of Beta Brands Limited, Registration No. 1050210, of $36,619 as at June 30, 2001, plus investment earnings thereon to the date of payment, to Beta Brands Limited.

DATED at North York, Ontario, this 31st day of January, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario

Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans – Subsection 83(1) of the PBA

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for the Hourly Employees of Usarco Limited, Registration Number 0597393 (formerly C-15367)** (the "Pension Plan");

TO: **Ernst & Young Inc.**
Ernst & Young Tower
Toronto-Dominion Centre
222 Bay Street
P.O. Box 251
Toronto ON M5K 1J7

Attention: Mr. Brian Denega
Senior Vice-President
Administrator of the Pension Plan the Hourly Employees of Usarco Limited

AND TO: **Usarco Limited**
363 Wellington Street North
Hamilton ON L8L 5B2
Employer

AND TO: **PricewaterhouseCoopers Inc.**
(formerly Coopers & Lybrand)
Commerce Court West, Suite 3300
Station Commerce Court
P.O. Box 31
Toronto ON M5L 1B2

Attention: Roxanne Anderson
Receiver and Manager of Usarco Limited

DECLARATION

WHEREAS:

1. The Pension Plan for the Hourly Employees of Usarco Limited, Registration No. 05973939 (previously C-15367) (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Plan was wound up effective July 31, 1990; and
4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Plan on September 13, 1990.
5. On November 6, 2001, I issued a Notice of Proposal dated October 31, 2001, to Make a Declaration that the Guarantee Fund applies to the Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The Supplement to the Windup Report filed by the Administrator indicates an estimated funding deficiency of $1,713,600 as at December 31, 2000.
2. PricewaterhouseCoopers Inc. was appointed Receiver and Manager of Usarco Limited on October 11, 1990.
3. The Administrator has advised that they were successful in collecting $509,558.24 of unpaid contributions from the Receiver and Manager for the Plan and are of the opinion that there are no further funds expected from the Receiver and Manager or any other known sources.

DATED at North York, Ontario, this 3rd day of January, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for Employees of JPE Canada Inc. who are Members of C.A.W. Locals 1524 and 1987, Registration Number 694570;**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
P.O. Box 82
Toronto ON M5K 1G8

Attention: Ms. Lois J. Reyes
Administrator

AND TO: **JPE Canada, Inc.**
775 Technology Drive
P.O. Box 660
Peterborough ON K9J 6Z8

Attention: Mr. Robert Tock
Employer

AND TO: **Grant Thornton LLP**
The Royal Bank Plaza
South Tower, 19th Floor
200 Bay Street
P.O. Box 55
Toronto ON M5J 2P9

Attention: Ms. Andrea Orr
Trustee in Bankruptcy

AND TO: **C.A.W. – Local 1524**
654 Rogers Street
Peterborough ON K9H 1Y2

Attention: Ms. Rose Forestall, President
C.A.W. – Local 1987
600 Wabanaki Drive
Kitchener ON N2C 2K4

Attention: Mr. David Bailey, President
C.A.W. Canada
205 Placer Court
North York ON M2H 3H9

Attention: Mr. Tom Murphy,
National Representative
Union

DECLARATION

WHEREAS:

1. The Pension Plan for Employees of JPE Canada, Inc. who are Members of C.A.W. Locals 1524 and 1987, Registration No. 694570 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Plan on July 16, 1999; and
4. The Plan was wound up effective February 9, 1999; and
5. On October 17, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated October 16, 2001, to Make a Declaration that the Guarantee Fund applies to the Plan; and

6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at windup was estimated to be 44.32%, with an estimated claim against the Guarantee Fund at windup of $1,155,965.
2. The estimated claim against the Guarantee Fund at December 1, 2001, is $1,856,552.
3. The employer, JPE Canada, Inc., made an assignment in bankruptcy on February 8, 1999.
4. The trustee in bankruptcy for JPE Canada, Inc. has advised the Administrator that there are no funds available from the estate of JPE Canada, Inc. to make payment to the Plan.
5. The purchaser of the assets of JPE Canada, Inc. did not provide a new registered pension plan, nor did they continue or assume the Plan.
6. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 14th day of January, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
By Delegated Authority from the
Superintendent of Financial Services
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for the Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 0327601;**

TO: **Morneau Sobeco**
1500 Don Mills Road, Suite 500
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Administrator

AND TO: **Zwaig Consulting Inc.**
Exchange Tower, Suite 1560
130 King Street West
P.O. Box 17
Toronto ON M5X 1J5

Attention: Mr. Jeffrey D. Kerbel
Trustee in Bankruptcy and Interim Receiver and Manager

DECLARATION

WHEREAS:

1. The Retirement Plan for Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 327601 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator of the Plan on December 22, 1999, and Morneau Sobeco (the "Administrator") is the agent acting for Deloitte & Touche Inc.; and
4. An Order of the Superintendent of Financial Services to windup the plan, dated August 29, 2001, effective July 7, 1999 to July 8, 1999, was served on the Administrator on November 27, 2001; and
5. The Administrator filed on August 10, 2001, an application for a declaration that the Guarantee Fund applies to the Plan in anticipation of making an application for an interim allocation of the Guarantee Fund; and
6. The said application for the declaration indicates that the Administrator was forced to impose financial hardship on current retirees by reducing their pension payments to the level that the Plan can support; and
7. On September 13, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated September 12, 2001, to make a Declaration that the Guarantee Fund applies to the Plan; and
8. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 62% with an estimated deficiency in windup assets compared to windup liabilities of $3,128,000 as of July 7, 1999.
2. The employer, Superior Machine and Tool (Chatham) Limited, was assigned into bankruptcy on July 8, 1999.
3. The trustee in bankruptcy has advised the Administrator that there are no assets available to the trustee from the estate of Superior Machine and Tool (Chatham) Limited for realization.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 15th day of January, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for the Salaried Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 0691642;**

TO: **Morneau Sobeco**
1500 Don Mills Road, Suite 500
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Administrator

AND TO: **Zwaig Consulting Inc.**
Exchange Tower, Suite 1560
130 King Street West
P.O. Box 17
Toronto ON M5X 1J5

Attention: Mr. Jeffrey D. Kerbel
Trustee in Bankruptcy and Interim Receiver and Manager

DECLARATION

WHEREAS:

1. The Retirement Plan for the Salaried Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 0691642 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator of the Plan on December 22, 1999, and Morneau Sobeco (the "Administrator") is the agent acting for Deloitte & Touche Inc.; and
4. An Order of the Superintendent of Financial Services to windup the plan, dated August 29, 2001, effective July 7, 1999 to July 8, 1999, was served on the Administrator on November 27, 2001; and
5. The Administrator filed on July 6, 2001, an application for a declaration that the Guarantee Fund applies to the Plan, in anticipation of making an application for an interim allocation of the Guarantee Fund; and
6. The said application for the declaration indicates that the Administrator was forced to impose financial hardship on current retirees by reducing their pension payments to the level that the Plan can support;
7. On September 13, 2001, the Deputy Superintendent, Pensions, issued a Notice of Proposal, dated September 12, 2001 to make a Declaration that the Guarantee Fund applies to the Plan; and
8. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 55% with an estimated deficiency in windup assets compared to windup liabilities of $3,000,000 as of July 7, 1999.
2. The employer, Superior Machine and Tool (Chatham) Limited, was assigned into bankruptcy on July 8, 1999.
3. The trustee in bankruptcy has advised the Administrator that there are no assets available to the trustee from the estate of Superior Machine and Tool (Chatham) Limited for realization.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 15th day of January, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
Superintendent of Financial Services
Financial Services Commission of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration Number 0582668 (formerly C-14740)** (the "Plan");

TO: **Deloitte & Touche Inc.**
c/o Morneau Sobeco
1500 Don Mills Road, Suite 500
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner
Administrator of the Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited

AND TO: **Bakelite Thermosets Limited**
621 Dundas Street East
Belleville ON K8N 5C5

Attention: K.W. Whitney
Treasurer
Employer

DECLARATION

WHEREAS:

1. The Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration No. 0582668 (previously C-14740) (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Plan was wound up effective March 31, 1990 by the Employer; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Plan on March 31, 1997.
5. On December 18, 2001, I issued a Notice of Proposal dated December 13, 2001, to Make a Declaration that the Guarantee Fund applies to the Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The Addendum to the Supplemental Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of $121,000 as at December 31, 2001.

2. The place of business of the Employer is closed.
3. The Administrator has advised that since the Employer is no longer in business, there are no further funds expected from any other sources.

DATED at North York, Ontario, this 6th day of February, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

Allocations of Money from the Pension Benefits Guarantee Fund – Subsection 34(7) of Regulation 909

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration Number 0582668 (formerly C-14740)** (the "Plan");

TO: **Deloitte & Touche Inc.**
c/o Morneau Sobeco
1500 Don Mills Road, Suite 500
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner
Administrator of the Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited

ALLOCATION

WHEREAS on February 6th, 2002, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Non-Contributory Pension Plan for Employees of Bakelite Thermosets Limited, Registration No. 0582668 (formerly C-14740) (the "Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "Regulation"), an amount not to exceed $121,000, to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation.

DATED at North York, Ontario, this 6th day of February, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

TRIBUNAL ACTIVITIES

Appointments of FST Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
Milczynski, Martha (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
McNairn, Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
Bush, Kathryn M. (Vice-Chair)		
O.C. 1052/2000	May 31, 2000	May 30, 2002**
O.C. 1666/99	October 6, 1999	June 16, 2000
O.C. 1191/99	June 17, 1999	October 6, 1999
O.C. 904/97	May 14, 1997	June 16, 1999
Corbett, Anne		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
Erlichman, Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Forbes, William M.		
O.C. 1624/2001	June 20, 2001	June 19, 2002**
O.C. 520/98	March 25, 1998	March 24, 2001
Gavin, Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
Greville, M. Elizabeth		
O.C. 441/2002	January 23, 2002	January 22, 2005**
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
Martin, Joseph P.		
O.C. 1626/2001	June 20, 2001	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
Short, David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
Vincent, J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**
Wires, David E.		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

** Or on the day FSCO/OSC merges, if earlier.

Pension Hearings Before the Financial Services Tribunal

Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number 336081, FST File Number P0099-2000;

On February 24, 2000, Mr. Patrick J. Moore, President of the United Brewers' Warehouse Workers, Local 375W, requested a hearing seeking an Order directing "the Superintendent to order the administrator of the Plan (Brewers Retail Inc.) to cease administering the Plan with an improperly constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the *Act* and formulating documents." The hearing request arose as a result of a letter from the Superintendent dated January 26, 2000, in which the Superintendent stated that there were no grounds under the *Pension Benefits Act* and Plan to order the establishment of an advisory committee. The letter also stated that any issue that Mr. Moore may have with the letter of understanding, which is part of the agreement between Brewers Retail Inc. and United Food and Commercial Worker's Provincial Board (the "UBWW/UFCW"), wherein Brewers Retail Inc. acknowledges that the UBWW/UFCW has a right to appoint a pension committee with membership, roles and responsibilities as set out in the *Pension Benefits Act*, would be a labour issue and not within the Superintendent's jurisdiction.

At a pre-hearing conference held on May 17, 2000, Brewer's Retail Inc. and the UBWW/UFCW were granted full party status. At the pre-hearing conference the parties agreed that before the Financial Services Tribunal considered the matter on its merits, it was necessary for it to determine the preliminary issue of whether it had jurisdiction to grant the relief sought in Mr. Moore's Request for Hearing. At the pre-hearing conference, the Superintendent raised the issue of whether notice to former members of the Plan ought to be provided as it appeared that former members of the Plan were not represented.

In a telephone conference held on November 16, 2000, the hearing on the Notice issue was scheduled for March 7, 2001. The hearing on the jurisdictional issue was scheduled for September 28, 2001.

On March 7, 2001, the Tribunal decided that former members had received adequate notice of the proceeding through the existing parties to the proceeding. The written Reasons for Decision dated April 10, 2001, were published in Volume 10, Issue 2 of the Pension Bulletin.

On September 28, 2001, the Tribunal decided that it did not have jurisdiction to grant the relief sought by Mr. Moore. Written Reasons for Decision are forthcoming.

Ontario Public Service Pension Plan, Registration Number 208777, FST File Number P0116-2000;

On August 2, 2000, the Ontario Pension Board filed a Request for Hearing in respect of the Superintendent's Notice of Proposal dated July 12, 2000, ordering the Ontario Pension Board to pay Mr. Victor Burns his full pension benefits, with interest payable pursuant to subsection 24(11) of Regulation 909 made under the *Pension Benefits Act*, retroactive to the date of Mr. Burns' retirement from the Ontario Provincial Police ("OPP"), within 60 days from the date of the Order, and on an ongoing basis.

An Application for Party Status was filed by Victor Burns on November 9, 2000, and full party status was granted by the Financial Services Tribunal at a pre-hearing conference held on November 23, 2000.

The hearing was held on October 15 and 16, 2001. Reasons for Decision, dated February 28, 2002, are published in this Pension Bulletin on page 91.

Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Incorporated, Registration Number 344002, FST File Number P0130-2000;

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve a Partial Windup Report in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each windup report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the windup period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial windup; and (d) provide for the distribution of assets related to the partial windup group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the Order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring a motion with respect to answers to interrogatories. The motion is scheduled for June 4, 2002.

Marshall-Barwick Inc. (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Ltd.) requested a hearing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Windup Report as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Ltd. and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Ltd. as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the report does not protect the interests of all those affected by the partial windup, specifically, Mr. Jeffrey G.

Marshall, an employee who was terminated during the windup period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001. The hearing scheduled for November 29 and 30, 2001, was adjourned as a result of a joint request made by the parties on November 6, 2001. The reason for the request was due to the applicant providing Mr. Marshall with actuarial data in respect of Mr. Marshall's benefit entitlements. Mr. Marshall required additional time to obtain expert advice in respect of the information. The hearing is scheduled for September 9 and 10, 2002.

National Steel Car Limited, Registration Numbers 0215020 and 0215038, FST File Number P154-2001;

On March 7, 2001, representatives for members of the Pension Plan for Salaried Employees of National Steel Car Limited requested a hearing regarding the Superintendent's Consent to the Transfer of Assets of the Pension Plan for Salaried Employees of National Steel Car Limited to the Pension Plan for Hourly-Paid Employees of National Steel Car Limited. The Salaried Plan is in a surplus position and the Hourly-Paid Plan has an unfunded liability.

Applications for Party Status were filed on behalf of National Steel Car Limited and certain representatives of the United Steel Workers of America, Local 7135, on behalf of the members of the Hourly-Paid Plan. The two applicants for party status were joined as parties by order at the pre-hearing conference held on June 21, 2001. The main issues in this case are whether the Tribunal has the jurisdiction to entertain the applicant's request for a hearing and whether the Superintendent's Consent to the Transfer of Assets should be set aside or varied.

A settlement conference was held September 24, 2001. The hearing was held January 15, 16 and 17, 2002. The decision was reserved.

Independent Order of Foresters Fieldworkers, Registration Number 0354399, FST File Number P155-2001;

On August 12, 2001, The Independent Order of Foresters ("IOF") requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to refuse to consent to an application for the payment of the surplus of the IOF Fieldworkers Pension Plan to the employer. The Superintendent proposed to refuse consent on the basis that she was not satisfied that the Plan had a surplus and that the Plan provides for the payment of any surplus to the employer on the windup of the Plan.

A pre-hearing conference was held on July 4, 2001, at which Mr. Irvin Grainger was joined as a party to the proceeding. The pre-hearing conference continued on July 27, 2001, at which time it was agreed that a settlement conference would be held on November 13, 2001. A motion by IOF for a determination of the appropriate manner and form of giving notice of the hearing in this matter was heard on December 7, 2001, by a panel of the Tribunal, and was followed by a further continuation of the pre-hearing conference. At the motion hearing it was ordered that notice of hearing be by way of national newspaper publication, and that the notice also be provided by ordinary mail to all members and former members affected by the windup. Written Reasons for Orders dated January 8, 2002, are published

on page 86. Hearing dates are scheduled for June 18, 19, 20 and 21, 2002.

Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;

On April 17, 2001, Cooper Industries (Canada) Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 8, 2001, to refuse to approve a Partial Windup Report prepared in November 1999, in relation to the partial windup of the Retirement Plan for Salaried Employees of Cooper Canada – Plan A, Registration No. 240622, as at March 30, 1992, in relation to employees at the Port Hope location of Cooper Industries (Canada) Inc. and to make an Order requiring Cooper Industries (Canada) Inc. to refrain from using and to preserve for distribution that portion of the surplus of the Plan attributable to the Port Hope location. The basis for the Notice of Proposal was that the Partial Windup Report proposed that the surplus assets of the Plan attributable to the Port Hope location be retained for continuing application toward future current service contributions for the Plan's continuing membership and, therefore, failed to provide for distribution of the Port Hope surplus assets.

On May 14, 2001, Messrs. Ray Mills and Larry Battersby applied for party status on behalf of Plan members and former Plan members employed at the Port Hope plant and beneficiaries of same.

A pre-hearing conference was held on September 5, 2001, at which Messrs. Mills and Battersby were joined as parties. The pre-hearing conference is scheduled to continue on May 27, 2002.

Pension Plan for the Employees of Dyment Limited, Registration Number 0242735, FST File P0157-2001;

On April 18, 2001, Dyment Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to make an Order that the Pension Plan for the Employees of Dyment Limited, Registration No. 0242735, be wound up in full effective August 23, 1996, and to refuse to approve the Actuarial Report prepared in April 1997 in relation to the partial windup of the Plan as at August 23, 1996.

The basis for the Notice of Proposal was that as of August 23, 1996, there were no remaining active members in the Plan and Dyment was no longer required to make contributions. The basis for refusing to approve the Actuarial Report is that the report does not meet the requirements of the *Pension Benefits Act* and the Regulations and does not protect the interests of the members or former members of the Plan.

On May 22, 2001, Mr. Mobeen Khaja applied for party status. Mr. Khaja was part of a group of employees who were subject to the partial windup of the Plan, and would be affected by a full windup of the Plan.

A pre-hearing conference was held on July 13, 2001, at which Mr. Khaja was joined as a party to the proceeding. Hearing dates originally scheduled for January 24 and 25, were changed to April 15 and 16, 2002, and were subsequently adjourned at the parties' request so that settlement discussions may continue.

Camco, Inc. Pension Plan Number 4, Registration Number 0583302 to Camco, Inc. Pension Plan Number 7, Registration Number 0583336, FST File Number P160-2001;

On May 14, 2001, Camco, Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 30, 2001, to refuse to consent to a transfer of assets from the Camco, Inc. Pension Plan No. 4, Registration No. 0583302, to the Camco, Inc. Pension Plan No. 7, Registration No. 0583336.

The basis for the Notice of Proposal was that the asset transfer does not protect the pension benefits and other benefits of the former members of Plan 4 under subsection 81 (5) of the *Pension Benefits Act*.

A pre-hearing conference was held on September 24, 2001. The settlement conference scheduled for December 17, 2001 was rescheduled to February 7, 2002. Parties continuing settlement discussions.

Consumers Packaging Inc., Pension Plan II, Registration Number 0998682, FST File Number P162-2001;

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to refuse to approve a Partial Windup Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial windup of the Consumers Packaging Inc. Pension Plan II, Registration No. 0998682, as at May 7, 1997, and to refuse to register an amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment No. 2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a Partial Windup Report in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 Partial Windup Report on the grounds that the replacement call-in employees were not included in the Report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial windup. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended Partial Windup Report. In addition, in 1997, Consumers Packaging filed an application to register Amendment No. 2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised Partial Windup Report (the "revised Report") and a revised application to register Amendment No. 2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal based on that the revised Amendment is void pursuant to subsection 19(3)(b) of the *Pension Benefits Act* and that the revised Report does not meet the requirements of the *Pension Benefits Act* pursuant to subsection 70(5) because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the *Act* and does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List, issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001, and again until October 1, 2001.

An Application for Party Status was filed on behalf of United Steelworkers of America, Local 203G, on February 13, 2002, and full party status was granted by the Financial Services Tribunal at a pre-hearing conference held on February 19, 2002.

The hearing is scheduled for July 29 and 31, 2002.

CBS Canada Co., Westinghouse Canada Inc. Pension Plan, Registration Numbers 348409 and 526632, FST File Number P164-2001;

On June 8, 2001, CBS Canada Co., the successor to Westinghouse Canada Inc., requested hearings in connection with the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to refuse to approve various Partial Windup Reports in respect of the Salaried Employees Pension Plan and the Hourly Paid Employees Pension Plan of Westinghouse Canada Inc. The partial windups were triggered by the closure by ABB Canada Inc. of its plants in London, Ontario; St. Jean, Quebec; and Burlington, Ontario; at which it carried on businesses acquired from Westinghouse Canada Inc., and by the closure by Westinghouse Canada Inc. of its Motor Division plant in Hamilton, Ontario.

The basis for each Notice of Proposal was that the relevant Partial Windup Report failed to provide employer request early retirement benefits and related bridge benefits, contemplated by each Plan, to all members of the partial windup group whose age plus years of service equaled at least 55 and because the Report failed to provide for the distribution of surplus relating to the partial windup group.

On June 19, 2001, CAW Canada, which represented the employees who were members of the Westinghouse Hourly Paid Employees Pension Plan filed an Application for Party Status in these proceedings. At a pre-hearing conference on November 5, 2001, CAW Canada was granted party status in the proceedings concerning the Notices of Proposal relating to the Hourly Employees Pension Plan and was given limited rights to participate in the proceedings concerning the Notices of Proposal relating to the Salaried Employees Pension Plan. The various proceedings were directed to be heard together.

At a continuation of the pre-hearing conference, held on November 29, 2001, a hearing was scheduled for February 4-5, 2002 to deal with several jurisdictional issues to be brought on by motion of CBS Canada Co. Those issues included the following:

- whether the Superintendent was entitled to rescind the initial approvals that she had given with respect to several of the partial windup reports, for failure to adhere to the doctrine of fairness, and for which she subsequently substituted Notices of Proposal to refuse approval;
- whether the Tribunal could direct the Superintendent to refuse approval of certain of the Windup Reports on the basis of a

ground that was not specifically recited in the relevant Notices of Proposal;

- whether the Tribunal could determine the responsibility for any special benefits payable to the former Westinghouse employees at the facilities that were closed by ABB Incorporated as between CBS Canada Co. and ABB Incorporated; and
- whether the Tribunal could order that ABB Incorporated be added as a party to the proceedings against its will.

At the hearing on the jurisdictional motion, the Tribunal refused to order that ABB Inc. be added as a party, but otherwise reserved its determination of the issues raised by the motion.

The hearing on the merits has been scheduled for May 13-17 and May 28-30, 2002.

Crown Cork & Seal Canada, Inc., Registration Numbers 474205, 595371 and 338491, FST File Number P0165-2001;

On June 29, 2001, Crown Cork & Seal Canada, Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada, Inc. from the Crown Cork & Seal Canada, Inc. Pension Plan for Salaried Employees, Registration No. 0474205, and The Pension Plan for Clerical Employees of Crown Cork & Seal Canada, Inc., Registration No. 0595371, into the Crown Cork & Seal Canada, Inc. Pension Plan for Employees, Registration No. 338491.

The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of the pre-hearing conference. The parties agreed to adjourn this matter *sine die* pending discussions between the parties.

Samsonite Canada Inc., Samsonite Canadian Service Related Pension Plan, Registration Number 398578, FST File Number P0166-2001 and FST File Number P175-2001;

On July 3, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated June 1, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Service Related Pension Plan, Registration No. 398578.

On November 2, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated October 11, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Retirement Income Plan, Registration No. 373225.

At the pre-hearing conference held on November 9, 2001, the parties requested that these two matters be joined and heard together. The matters were joined and a hearing is scheduled for June 3, 2002.

James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;

On July 13, 2001, James MacKinnon requested a hearing with respect to the Superintendent's Notice of Proposal dated June 20, 2001, to refuse to make an Order regarding Mr. MacKinnon's request that he is entitled to receive a "Thirty and Out" pension benefit from the Labourers' Pension Fund of Central and Eastern Canada. The basis for the refusal is that in refusing to grant Mr. MacKinnon a "Thirty and Out" pension, the Plan administrators have administered the Plan in compliance with requirements of the *Pension Benefits Act*, the Regulations and the filed documents in respect of which the Superintendent of Financial Services has issued a certificate of registration. Subsection 87(2) of the *Act* allows the Superintendent to make an Order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the Regulations or the pension plan.

On July 31, 2001, the Board of Trustees of the Labourers' Pension Fund of Central and Eastern Canada filed for party status on the basis that they are the Administrators of the Plan and wish to fulfill their fiduciary duties to all beneficiaries to ensure that only valid and proper claims for benefits are paid out from the Fund to protect the interests of all beneficiaries.

At the pre-hearing conference held on November 22, 2001, party status was granted to the Labourers' Pension Fund of Central and Eastern Canada. A settlement conference is scheduled for April 5, 2002, and the hearing is scheduled for July 17-18 and August 16, 2002.

Imperial Oil Limited Retirement Plan, Registration Number 347054, FST File Number P0169-2001;

In this matter, the Superintendent alleges that, effective April 28, 1995, Imperial Oil Limited ("IOL") sold its credit card operations to General Electric Capital Canada Inc. ("GE Capital"), at which time 37 individuals, who had been employed by IOL in that business and were members of the IOL Retirement Plan, became employees of GE Capital and members of its pension plan, while maintaining their accrued benefits in the IOL Retirement Plan.

On August 3, 2001, the Superintendent issued Notices of Proposal to make Orders requiring:

- that the IOL Retirement Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by GE Capital, between March 2000 and July 2000, as a result of the closure of its Markham, Ontario credit card facility; and
- that such members and former members of the IOL Retirement Plan be given credit for both age and service at the time they ceased to be employed by GE Capital when determining their benefits, in accordance with section 80(1)(c) of the *Pension Benefits Act*, under the IOL Retirement Plan.

On August 24, 2001, IOL requested a hearing in respect of these Notices of Proposal.

A pre-hearing conference was held on January 9, 2002. The hearing is scheduled for May 8-9 and June 10-11, 2002.

Stanley Canada Inc. Pension Plan for Designated Employees of Stanley Canada Inc., Registration Number 456897, FST File Number P0170-2001;

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the Application for Payment of Surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefits Act*.

An Application for Party Status was filed on November 20, 2001, by Mr. Blaine Mitton, a Member of the Plan.

The pre-hearing conference scheduled for November 28, 2001, was rescheduled to January 10, 2002, at which time Mr. Mitton was granted party status. On January 11, 2002, an Application for Party Status was filed by Mr. Edward Holba, a Member of the Plan. The hearing is scheduled for May 21-24, 2002.

Canadian Tack & Nail Ltd. Pension Plan for Salaried Employees, Registration Number 0581306, FST File Number P0171-2001;

On September 14, 2001, Canadian Tack & Nail Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated August 14, 2001, to make an Order under section 87 of the *Pension Benefits Act*, requiring the Employer or Administrator of the Plan to remit within 30 days of receiving the Notice of Proposal, outstanding contributions in the amount of $67,933 as of December 31, 1999, owed to the Pension Fund together with interest payable under section 24 of the Regulation 909 under the *Act*.

The basis for the Notice of Proposal is that subsection 87(2) of the *Act* allows the Superintendent to make an Order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the Regulations or the pension plan or if the employer, administrator of a pension plan, or any other person is contravening a requirement of the *Act* or the Regulations.

At a pre-hearing conference on February 7, 2002, the parties agreed to a settlement conference, and will advise the Financial Services Tribunal when it is to be scheduled.

The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the Application for Payment of Surplus to the employer dated July 17, 2000, pursuant to section 78(1) of the *Pensions Benefit Act* from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference is scheduled for April 25, 2002.

Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579, FST File Number P0173-2001;

On November 5, 2001, certain Former Members requested a hearing regarding the Superintendent's Notice of Proposal dated October 3, 2001, to refuse to make an Order under sections 69 and 87 of the *Pension Benefits Act*. The Superintendent is proposing to refuse to make an Order that the Plan be partially wound up

with respect to former employees of Proctor & Redfern Limied whose employment was terminated between and including 1994 and 1998; to refuse to make an Order that the former employees whose employment was terminated between and including 1994 and 1998 as well as former employees who had their pension benefits annuitized in 1998 and 1999 be included in the surplus sharing group identified in the revised Windup Report dated December 2000; a refusal to order that they be entitled to share in the surplus distribution on an equitable basis; and a refusal to make an Order that Earth Tech (Canada) Inc. refund to the Plan any funds improperly withdrawn from the Plan to fund its own legal and actuarial costs.

On November 26, 2001, Earth Tech (Canada) Inc. filed for party status on the basis that it is the Administrator of the Plan and has a duty to ensure that the Plan is properly wound up.

A pre-hearing conference is scheduled for May 1, 2002.

Retirement Pension Plan for Employees of Twin Oak Credit Union Ltd., Registration Number 284257, FST File Number P0178-2002;

On January 11, 2002, Twin Oak Credit Union Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated December 13, 2001, proposing to make an Order under section 87 of the *Pension Benefits Act*, with respect to Carol Joseph and any other part-time employee eligible for membership in the Plan. The Superintendent is ordering that the Administrator of the Plan pay to Ms. Joseph her pension benefit determined on the basis that Ms. Joseph was eligible for membership and should have been enrolled in the Plan effective January 1, 1978. The Superintendent is also ordering the Administrator to provide to any other part-time employee who was eligible to participate in the Plan, the monthly pension benefit determined on the basis that the part-time employee was eligible for membership and should have been enrolled in the Plan effective January 1, 1978 or later, if employed at a later date. Any lump sum owing to Ms. Joseph or any other eligible part-time employee representing retroactive payments shall also be credited with interest payable pursuant to subsection 21(11) of Regulation 909 made under the *Act*.

A pre-hearing conference is scheduled for April 24, 2002.

Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File#	Superintendent of Financial Services' Notice of Proposal:	Comments
U0174-2001	To Refuse to Consent, dated October 5, 2001	Reasons for Decision dated December 20, 2001 are published in this bulletin on Page 84
U0177-2002	To Refuse to Consent, dated November 22, 2001	Pre-Hearing (telephone conference) held on January 29, 2001
U0179-2002	To Refuse to Consent, dated November 22, 2001	Written submissions being exchanged
U0180-2002	To Refuse to Consent, dated December 21, 2001	Written submissions being exchanged
U0181-2002	To Refuse to Consent, dated January 16, 2002	Written submissions being exchanged

Decisions to be Published

The Independent Order of Foresters, Orders
(Date of Decision: December 7, 2001)

Financial Hardship, U0174-2001, Reasons for Order
(Date of Decision: December 20, 2001)

The Independent Order of Foresters, Reasons for Orders
(Date of Decision: January 8, 2002)

Ontario Public Service Pension Plan (Victor Burns), Reasons for Order
(Date of Decision: February 28, 2002)

FINANCIAL SERVICES TRIBUNAL DECISIONS WITH REASONS

INDEX NO.: FST File Number P0155-2001

PLAN: The Independent Order of Foresters Fieldworkers' Pension Plan, Registration Number 0354399

DATE OF DECISION: December 7, 2001

PUBLISHED: Bulletin 11/2 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the "Superintendent"), pursuant to the *Act*, to refuse to approve a windup report in respect of the Pension Plan for The Independent Order of Foresters Fieldworkers' Pension Plan, Registration No. 0354399 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*;

BETWEEN:

THE INDEPENDENT ORDER OF FORESTERS
Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

- and -

IRVIN GRANGER
Respondents

ORDERS

We order that notice of the hearing in this matter be provided by ordinary mail to all members and former members affected by the windup of the Independent Order of Foresters Fieldworkers' Pension Plan who would be potentially entitled to participate in a distribution of surplus of the Plan on its windup effective December 31, 1997. We also order that appropriate newspaper notice of the hearing be provided.

We order that the Applicant bear the costs of the provision of notice of hearing, subject to any arrangement for the allocation of those costs to the Plan should the Applicant's Application for Withdrawal of Surplus from the Plan be ultimately approved and subject to any order for costs that the Tribunal might order at the end of this proceeding.

MADE orally on the 7th day of December, 2001.

Louis Erlichman,
Member of the Panel

Heather Gavin,
Member of the Panel

Colin McNairn,
Chair of the Panel

INDEX NO.: FST File Number U0174-2001

DATE OF DECISION: December 20, 2001

PUBLISHED: Bulletin 11/2 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 5, 2001, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the *Act*;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 5, 2001, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

   67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "August Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "June Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.–(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the August Application.

4. The June Application was signed by the Applicant on June 1, 2001. On June 4, 2001, the Superintendent consented to withdrawal of $10,042.00 from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the June Application was a successful application.

5. On August 22, 2001, the Applicant signed the August Application, in which he

applied to withdraw the maximum amount allowed from his locked-in account on the basis of low income. As this application was made within 12 months after the successful June Application, which was made on the basis of low income, the August Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the August Application cannot be granted because it fails to meet one of those requirements. If in June 2002, 12 months after the date of the successful June Application, the circumstances of the Applicant are such that he could meet the qualifications for reliance on low income, a further such application for withdrawal of locked-in funds can then be made to the Superintendent.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated October 5, 2001, in respect of the August Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated October 5, 2001, directed to the Applicant.

DATED at North York, this 20th day of December, 2001.

Mr. C. S. Moore
Member, Financial Services Tribunal

INDEX NO.: FST File Number P0155-2001

PLAN: The Independent Order of Foresters Fieldworkers' Pension Plan, Registration Number 0354399

DATE OF DECISION: January 8, 2002

PUBLISHED: Bulletin 11/2 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario).

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the "Superintendent"), pursuant to the *Act*, to refuse to consent to the payment of surplus out of The Independent Order of Foresters Fieldworkers' Pension Plan, Registration No. 0354399 (the "Plan");

AND IN THE MATTER OF a Proposal by the Superintendent, pursuant to the *Act*, to refuse to approve a Windup Report in respect of the Pension Plan;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*;

BETWEEN:

THE INDEPENDENT ORDER OF FORESTERS
Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

- and -

IRVIN GRAINGER
Respondents

BEFORE:

Mr. Colin H.H. McNairn,
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman,
Member of the Tribunal and of the Panel

Ms. Heather Gavin,
Member of the Tribunal and of the Panel

APPEARANCES:

For The Independent Order of Foresters:

Ms. Lisa J. Mills

For the Superintendent of Financial Services:

Mr. Mark Bailey
Ms. Deborah McPhail

For Mr. Irvin Grainger:

Mr. Gerald Owen (by conference telephone)

HEARING DATE:

December 7, 2001
(North York, Ontario).

REASONS FOR ORDERS

Background

A motion was brought before the Tribunal to determine the nature of the notice to be provided of the hearing in this proceeding. The proceeding before the Tribunal was commenced by way of a Request for Hearing filed on April 11, 2001 by The Independent Order of Foresters (the "IOF") challenging a Notice of Proposal of the Superintendent of Financial Services (the "Superintendent") dated March 19, 2001. In that Notice, the Superintendent proposes to refuse consent to an application by IOF for the withdrawal of surplus from the Independent Order of Foresters Fieldworkers' Pension Plan (the "Plan"), on its windup effective December 31, 1997, and to refuse approval of the Windup Report in respect of the Plan filed by IOF. The stated basis for the proposed refusals is that IOF had not demonstrated that the excess assets in the Plan constituted surplus for the purposes of the *Act* and that the Plan and the assets held in the fund of the Plan were subject to a trust for the benefit of the members and, therefore, no part of those assets could be properly paid to IOF even if they constituted surplus.

IOF's application for the withdrawal was made to the Superintendent on the basis that at least two-thirds of the Plan members had consented to a surplus distribution proposal under which IOF would share in a distribution of the surplus on a 50-50 basis with the members, former members and other persons entitled to benefits under the Plan, a group totalling 225 individuals. In soliciting consents to the surplus distribution proposal, IOF sent to the Plan members, on September 2, 1999, a Notice of Surplus Application that, in accordance with the requirements of the *Act* and the Regulation under the *Act*, advised recipients of the Notice that they could make submissions to the Superintendent concerning IOF's application, within 30 days of receipt of the Notice. Additional notice was given, at a later date, by publication in the Globe and Mail and La Presse. That notice also advised of the right to make submissions to the Superintendent concerning IOF's application, within 30 days of the date of publication. A number of submissions were, in fact, made to the Superintendent about the application. The Superintendent sent copies of the Notice of Proposal to those who had made submissions as well as to the IOF, as required by subsection 89(3.1) of the *Act*. One of those individuals, Irvin Grainger, applied for and has been granted party status in this proceeding.

On November 20, 2001, IOF sent a letter to Plan members updating them on the application process and the next steps in the proceeding before the Tribunal. No notice was given of the time and place of the hearing before the Tribunal, however, as this was not yet established.

Arguments

The Superintendent, supported by Mr Grainger, took the position that notice of the hearing should be given by mail to the members and former members of the Plan and by newspaper publication, all at the expense of IOF.

IOF took the position that notice of the hearing need not be given to those members and former members of the Plan who had declined to avail themselves of the opportunity to make submissions to the Superintendent in connection with IOF's surplus withdrawal application. It argued that the regulatory scheme under the *Act* involves a multi-step process that is really a continuum, the final stage of which is a hearing before the Tribunal should there be a

request for hearing. That scheme simply provides for notice to Plan members in connection with any proposed Application for Surplus Withdrawal to the Superintendent but not for notice (except for notice to those who are parties) at the stage of any subsequent Tribunal hearing. The requirements of procedural fairness, IOF argued, were satisfied by the initial notice, subject to any common law requirement to give further notice to "known opponents," such as those who had objected to the application before the Superintendent. In any case, IOF claimed, its letter of November 20, 2001 made any further notice to members and former members of the Plan unnecessary. Finally, IOF maintained that if any notice of hearing were to be required, the cost should be borne out of the Plan, and not by IOF.

Analysis

This Tribunal has the authority under section 22 of the *Financial Services Commission of Ontario Act, 1997* (the "*Governing Act*"), to "determine what constitutes adequate public notice" for a proceeding before the Tribunal. The term "public notice" implies notice to persons who may not be parties to a particular proceeding and would, at least, embrace notice by newspaper publication.

The Tribunal also has the authority under section 22 of the *Governing Act* to "make rules for the practice and procedure to be observed" for a proceeding before the Tribunal. The Tribunal has adopted Interim Rules of Practice and Procedure, pursuant to this provision, that apply generally to proceedings before it. Those Rules do not constrain the authority of the Tribunal to determine what constitutes adequate public notice of a hearing. Indeed, Rule 22.02 reinforces the authority of the Tribunal to provide for notice beyond the immediate parties to a proceeding by requiring the Tribunal to provide written notice of a hearing "to the parties and others as required by law, and as the Tribunal considers necessary" (emphasis added).

On this motion, we heard arguments as to what notice of hearing is required, in the circumstances of this case, by the terms of the *Act* and the Regulation under it and by the common law rules of natural justice and fairness. While these sources may be instructive in some situations, we are not limited by them as we have the authority to decide, in a particular case, what public notice is adequate and to whom we consider notice to be necessary. In other words, these sources simply establish the minimum requirements of notice.

In deciding on the appropriate notice of the hearing in this case, we have considered Rule 39.04 of the Interim Rules of Practice and Procedure. That Rule sets out the criteria for determining whether to grant a person party status in a proceeding before the Tribunal. Therefore, the Rule is not directly applicable to the question we have to decide on this motion. However, the criteria established by the Rule can be usefully applied, by analogy, to ascertain those who might have a legitimate interest in receiving notice of the hearing, since such notice would give them the basic information that would enable them to decide whether they should apply for party status. Applying the principles of Rule 39.04, we believe that given the likelihood that members and former members of the Plan would have a genuine interest in the issues raised by this case and the likelihood that some members of that group might be able to make a useful, and perhaps different, contribution to the understanding of those issues, they should be given notice of the hearing before the Tribunal.

We are not persuaded that notice to all members and former members of the Plan is unnecessary at this stage simply because general notice of IOF's application to the Superintendent for approval of a distribution of surplus from the Plan was required and provided at an earlier stage. While in some sense the hearing before the Tribunal can be viewed as a continuation of the application process before the Superintendent, the Tribunal is a separate body that does not simply review decisions or proposed decisions of the Superintendent but hears each case "de novo." In this particular proceeding, there have been developments in the case that suggest to us that a fresh notice, focusing on the hearing before the Tribunal, should be provided. For one thing, over two years have elapsed since the original notice of the surplus withdrawal application was given and it did not refer to the possibility of a hearing before the Tribunal, which has now materialized. For another thing, the position taken by the Superintendent on the application, as evidenced by the Notice of Proposal, may result in some members or former members of the Plan now wishing to become involved – whether as parties or in some other way – even though they were prepared to stand on the sidelines at the earlier stage. It is not just those who might object to the surplus withdrawal application that might be inclined to participate in the hearing in some way, but also those who support the application, who might now feel the need to get actively behind the application given the Superintendent's proposed refusal. This is not to say that we would necessarily take a different view of the desirability of notice of the hearing to members and former members of the Plan had the Superintendent proposed to approve the Surplus Withdrawal Application.

We do not think that IOF's letter of November 20, 2001 makes notice of the hearing to those who received the letter unnecessary. That letter does not indicate the time and place of the hearing nor does it indicate how to contact the Registrar of the Tribunal for further information about the hearing, all of which would be provided by a properly worded notice of hearing.

Since the original notice of IOF's application for surplus withdrawal was given by a mailing to members and former members of the Plan and by newspaper publication, we think that the notice of the hearing before the Tribunal should be given in the same manner.

When this Tribunal requires notice of hearing to be provided to plan members who are not represented by a union, the practice has been for the costs and, generally, for the logistics of effecting notice, once the form is settled, to be assumed by the applicant in the matter if the applicant is the plan sponsor. We see no reason for departing from that practice in this case.

Disposition

At the end of the hearing of the motion on December 7, 2001, we made the following orders:

> We order that notice of the hearing in this matter be provided by ordinary mail to all members and former members affected by the windup of the Independent Order of Foresters Fieldworkers' Pension Plan who would be potentially entitled to participate in a distribution of surplus of the plan on its windup effective December 31, 1997. We also order that appropriate newspaper notice of the hearing be provided.
>
> We order that the Applicant bear the costs of the provision of notice of hearing,

subject to any arrangement for the allocation of those costs to the pension plan should the Applicant's application for withdrawal of surplus from the plan be ultimately approved and subject to any order for costs that the Tribunal might order at the end of this proceeding.

DATED at North York this 8th day of January, 2002.

Colin H.H. McNairn,
Chair of the Panel

Louis Erlichman,
Member of the Panel

Heather Gavin,
Member of the Panel

INDEX NO.: FST File Number P0116-2000

PLAN: Ontario Public Service Pension Plan, Registration Number 208777

DATE OF DECISION: February 28, 2002

PUBLISHED: Bulletin 11/2 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997* S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the "Superintendent") to make an order under Section 87 of the *Act* respecting a request by Mr. Victor Burns relating to the Ontario Public Service Pension Plan, Registration Number 208777;

AND IN THE MATTER OF a Hearing in Accordance with Subsection 89(8) of the *Act*.

BETWEEN:

ONTARIO PENSION BOARD
Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES OF ONTARIO

- and -

VICTOR BURNS
Respondents

BEFORE:

Ms. Anne Corbett,
Member of the Tribunal and Chair of the Panel

Mr. Louis Erlichman,
Member of the Tribunal and the Panel

Mr. William Forbes,
Member of the Tribunal and the Panel

REPRESENTATIONS BY:

For the Ontario Pension Board:

Mr. Murray Gold
Ms. Susan Philpott

For the Superintendent of Financial Services:

Ms. Frederika Rotter
Ms. Deborah McPhail

For Mr. Victor Burns:

Mr. David J. Jewitt

HEARING DATES:

October 15 and 16, 2001
(North York, Ontario).

REASONS FOR DECISION

Nature of Application

The Ontario Pension Board (the "Applicant") requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal issued by the Superintendent of Financial Services ("Superintendent"). The Notice of Proposal indicated that the Superintendent was proposing to order the

Applicant to pay Mr. Victor Burns his full pension benefits, with interest, payable pursuant to Section 24 (11) of Regulation 909 under the *Pension Benefits Act* retroactive to the date of Mr. Burns' retirement from the Ontario Provincial Police. The Applicant takes the position that the Notice of Proposal should be quashed on the basis that Mr. Burns' employment was not terminated with the Ontario Provincial Police but was deemed to be continued, pursuant to Section 80 (3) of the *Act*, as Mr. Burns assumed new employment with the Ottawa-Carleton Police Services Commission on or about the day following his termination of employment with the Ontario Provincial Police and that that new employment was in conjunction with the transfer of part of the police services of the Ontario Provincial Police to the Ottawa-Carleton Police Services Commission.

Both the Superintendent and Mr. Burns contend that Section 80 (3) of the *Act* does not apply to Mr. Burns.

Facts

Effective February 28, 1997, Mr. Burns terminated his employment with the Ontario Provincial Police. Prior to that date Mr. Burns was employed as a District Inspector with responsibility for seven (7) of thirteen (13) detachments of the Ontario Provincial Police in the Ottawa area.

Effective January 1, 1995, Bill 143, an *Act to Amend Certain Acts related to the Regional Municipality of Ottawa-Carleton and to amend the Education Act in respect of French Language School Boards was passed*. It affected police services in the Ottawa-Carleton region. The former Gloucester, Nepean and Ottawa Police Services were amalgamated into the Ottawa-Carleton Regional Police Services effective January 1, 1997. During the period from December 1996 through to July 1999, there was a divestment of police services from the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services.

In connection with the transfer of police services from the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services a transfer protocol was established which governed the transfer of employees between the police services.

Mr. Burns commenced employment as an Inspector with the Ottawa-Carleton Regional Police Services on March 3, 1997. His new employment arrangements were not governed by the transfer protocol but were the result of arrangements made directly between Mr. Burns and the Chief of the Ottawa-Carleton Regional Police Services. Upon commencing employment with the Ottawa-Carleton Regional Police Services, Mr. Burns became a member in OMERS.

At the time that Mr. Burns terminated his employment with the Ontario Provincial Police he had thirty-three (33) years and seven (7) months pension credit in the Plan and was fifty-five (55) years of age. On the basis of the combination of his age and pension credits, Mr. Burns was eligible for an unreduced immediate pension under the Ontario Provincial Police Early Retirement Benefit provisions in Section 15 (4) of the Plan. Mr. Burns applied for a pension under the Plan. His application was considered by both the Adjudication Committee of the Ontario Pension Board and by the Pension Policy Committee of the Ontario Pension Board, both of which determined that Mr. Burns did not terminate employment with the Ontario Provincial Police for the purpose of the *Pension Benefits Act* but

was deemed by Section 80 (3) of the *Act* to continue employment with a successor employer, the Ottawa-Carleton Regional Police Services.

Mr. Burns retired from the Ottawa-Carleton Regional Police Services on September 30, 1999 and is now in receipt of a pension from both the Plan and OMERS.

Pension Benefits Act

The relevant provisions of the *Act* are as follows:

> **80 (1)** Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employee and becomes a member of a pension plan provided by the successor employer:
>
> (a) continues to be entitled to the benefits provided under the employe's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;
>
> (b) is entitled to credit in the pension of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining the eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
>
> (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.
>
> **80 (3)** Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this *Act*, not to be terminated by reason of the transaction.

Issues

The parties agreed that the issues to be determined by the Tribunal were as follows:

Was there a sale, assignment or other disposition of all or part of the business or all or part of the assets of the Ontario Provincial Police, Mr. Burns' former employer to the Ottawa-Carleton Regional Police Services?

If the answer to issue (1) is yes, did the Applicant become an employee of the Ottawa-Carleton Regional Police Services in conjunction with the sale, assignment or disposition?

If the answers to issues (1) and (2) are yes, what are the consequences that flow from this transaction under subsections 80 (1) (a), (b) and (c) and 80 (3) of the *Act*.

Issues 1 and 2:

1. Was there a sale, assignment of other disposition of all or part of the business or all or part of the assets of the Ontario Provincial Police, Mr. Burns' former employer to the Ottawa-Carleton Regional Police Services?

If the answer to issue (1) is yes, did the Applicant become an employee of the Ottawa-Carleton Regional Police Services in conjunction with the sale, assignment or disposition?

In argument, all parties acknowledged that there was a disposition of a part of the police services of the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services and accordingly, the only real issue in this case is whether, for the purposes of Section 80 of the *Pension Benefits Act* Mr. Burns became an employee of the Ottawa-Carleton Regional

Police Services "in conjunction with" the partial divestment of the policing services from the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services.

The question of whether or not change of employment is "in conjunction with" the disposition of a business is ultimately a question of fact.

Both the Superintendent and Mr. Burns argued a number of factual circumstances as supporting their position that Mr. Burns' new employment with the Ottawa-Carleton Regional Police Services was not "in conjunction with" the transfer of policing services which was taking place between the Ottawa-Carleton Regional Police Services and the Ontario Provincial Police. In particular, the following facts were asserted:

Prior to his change of employment, Mr. Burns did not work exclusively in the geographic areas that were subject to the transfer of policing services.

Mr. Burns' duties were not eliminated by virtue of the transfer.

Mr. Burns' position would not have been terminated by reason of the transfer. Had he not elected to terminate his employment he would have continued to be employed by the Ontario Provincial Police and even if his position had been eliminated by the transfer the Ontario Provincial Police would have found another position for him.

Mr. Burns was not part of the group that was the subject to the transfer protocol which was negotiated between the two police services.

Mr. Burns' new employment was negotiated directly with the Chief of Police and was not on terms that paralleled any of the terms that applied to officers' transferring under the transfer protocol.

In considering the question of whether Mr. Burns' new employment was "in conjunction with" the disposition of police services from the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services it is relevant that Mr. Burns' new employment commenced during the period of disposition. Mr. Burns' duties with the Ontario Provincial Police were directly related to the services that were the subject matter of the disposition. Mr. Burns was responsible for seven (7) of thirteen (13) detachments. Of those seven (7) detachments, six (6) were the subject of the disposition. The fact that Mr. Burns' duties prior to his termination of employment were related to the services that were the subject of the disposition together with his transfer of employment taking place during the term of disposition are sufficient for Mr. Burns to become an employee of the Ottawa-Carleton Regional Police Services in conjunction with the sale, assignment or disposition of part of the police services of the Ontario Provincial Police to the Ottawa-Carleton Regional Police Services.

Accordingly, the transaction falls within the description of section 80 (1) and therefore section 80 (3) of the *Act* applies.

It is not necessary for an individual's position to be eliminated by virtue of the disposition for section 80 (3) to apply. Section 80(3) can apply to situations where employees voluntarily leave employment with one employer to commence employment with another if that change of employment is "in conjunction with" the sale, assignment or disposition of the first employer's business. In addition, it does not matter whether the individual negotiates his or

her new employment terms directly with the new employer or is part of arrangements negotiated between employers. It is not uncommon in the purchase and sale of a business for different transfer arrangements to apply to different employees and for senior employees to have individual arrangements. Section 80(3) can also apply in circumstances where the employee's duties with the first employer are different than the duties the employee has with the second employer.

Issue 3:

1. If the answers to issues (1) and (2) are yes, what are the consequences that flow from this transaction under subsections 80(1) (a), (b) and (c) and 80(3) of the *Act*.

As the Tribunal found in *Horgan and Anand and Superintendent of Financial Services and Ontario Pension Board and OPSEU Pension Trust*, FST Reasons for Decision, (FST File P0120-2000 and P0147-2001), FSCO Pension Bulletin, Volume 11, Issue 1, page 149, subsection 80 (3) of the *Act* is unambiguous. Where a transaction described in Section 80 (1) takes place, the employment of the employee who became employed by the successor employer in conjunction with the transaction is deemed for the purposes of the *Act* not to be terminated by reason of the transaction.

The effect of section 80 (3) is that Mr. Burns was not entitled to commence receiving a pension on February 28, 1997, the date he ceased his employment with the Ontario Provincial Police.

Order

For the reasons noted above, the Superintendent's Notice of Proposal dated July 12, 2000, is quashed.

DATED at North York, Ontario, this 28th day of February, 2002.

Anne Corbett,
Member of the Tribunal and
Chair of the Panel

William M. Forbes,
Member of the Tribunal and
Member of the Panel

Louis Erlichman,
Member of the Tribunal and
Member of the Panel

NOTES

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The Editor, *Pension Bulletin*
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